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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation Into SBC Ohio's (formerly Ameritech Ohio) Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996.	))))	Case No. 00-942-TP-COI

REPORT AND EVALUATION

I. BACKGROUND AND PROCEDURAL HISTORY:

On February 8, 1996, the Federal Telecommunications Act of 1996 (1996 Act) was enacted, to among other things, encourage the development of competition for the benefit of consumers. One of the provisions of the 1996 Act, Section 271, specifies the conditions under which a Bell Operating Company (BOC) such as SBC Ohio (formerly Ameritech Ohio) may provide in-region, interLATA services. Section 271(c)(2)(B) of the 1996 Act sets forth a competitive checklist that enumerates the access and interconnection that SBC Ohio must provide or offer to other telecommunications carriers before the Federal Communications Commission (FCC) may authorize the company to provide in-region, interLATA services. Section 271(d)(2)(B) of the 1996 Act requires the FCC to consult with state commissions regarding a BOC's compliance with the competitive checklist.

Pursuant to Section 4905.04, Revised Code, the PUCO is empowered to supervise and regulate public utilities, including telephone companies. This

jurisdiction includes that which is reasonably necessary for the PUCO to perform the acts of the state commission pursuant to the 1996 Act.

On July 17, 1996, Case No. 96-702-TP-COI (96-702), *In the Matter of the Investigation Into Ameritech Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, was opened to examine SBC Ohio's compliance with the competitive checklist. In the 96-702 proceeding, a significant number of motions were filed, direct and cross-examination testimony was heard and initial and reply briefs were filed. Subsequently, SBC Ohio informed the PUCO that the company did not intend, in the foreseeable future, to pursue in-region, interLATA authority in Ohio based on the record as developed in the 96-702 proceeding at that time.

On February 7, 2000, SBC Ohio filed a motion for a procedural order in 96-702. The motion sought a procedural order from the PUCO adopting a phased approach for completing an analysis of SBC Ohio's performance relative to the requirements of Section 271 of the 1996 Act. More specifically, SBC Ohio proposed that the phased approach include: (1) a regional third-party test of SBC Ohio's operational support systems (OSS) and performance measurements; (2) a review of SBC Ohio's checklist compliance, generic Section 271 agreement, and performance assurance (compliance) plan; and (3) a review of the final OSS test report and performance results. In accordance with the PUCO's Entry of June 1, 2000, 96-702 was closed and Case No. 00-942-TP-COI (00-942), *In the Matter of the Further Investigation Into SBC Ohio's (formerly Ameritech Ohio) Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, was opened. Additionally, the PUCO adopted the concept of a phased approach as recommended by SBC Ohio.

In our Entry of June 1, 2000, the PUCO noted that, pursuant to a merger stipulation in Case No. 98-1082-TP-AMT (98-1082), *In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control*, an Ohio-specific industry collaborative was established to investigate the implementation of the Texas OSS and facilities performance measures,[1] as well as the associated standards, benchmarks, and remedies. The stipulation further directed the aforementioned industry collaborative to consider the concerns for third-party and carrier-to-carrier testing of SBC Ohio's OSS for interconnection.

Evolving out of the 98-1082 collaborative, two additional collaboratives were formed. One collaborative was dedicated to developing a third-party test of SBC Ohio's OSS. BearingPoint Inc. (hereinafter BearingPoint) (formerly known as KPMG Consulting) was selected by the collaborative as the third-party test administrator. Hewlett-Packard (HP) was selected to provide technical assistance to the third-party test administrator. BearingPoint was required to work with the Ohio OSS collaborative in developing a master test plan (MTP) for the purpose of governing the OSS tests to be conducted by BearingPoint, including the establishment of parameters and time frames for test reports and actual performance results of the

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1 The Texas performance measurements were originally established pursuant to In the Matter of the Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. dba Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65 (Released June 30, 2000) (Texas 271 Order).

third-party OSS test.[2] The third-party test was to include OSS preordering, ordering, and provisioning functionalities.[3] The MTP was adopted by the PUCO in our Entry of December 7, 2000.[4] The final result of the third-party test was intended to assist the PUCO in determining whether SBC Ohio is in compliance with Section 271 of the 1996 Act.

The second collaborative focused on evaluating the adopted Texas performance measures and evaluating how those measures could be enhanced, modified, deleted, or new measures added to achieve a set of "best practice" rules that satisfy Ohio's needs. Rather than considering SBC Ohio's OSS processes in two separate proceedings, the PUCO concluded that it was appropriate to combine SBC Ohio's Section 271 "phased approach" proposal and the efforts of the Ohio OSS collaborative, and to incorporate the adopted Texas performance measurements into SBC Ohio's Section 271 proceeding.[5]

The established collaboratives continued to meet throughout the pendency of this case and filed joint progress reports summarizing their activities, including any agreed upon modifications to the MTP. On two occasions the PUCO held transcribed collaborative workshops for the purpose of discussing a number of checklist items delineated in Section 271 of the 1996 Act.[6] On numerous occasions, consistent with the dispute resolution process established in Case No. 93-487-TP-ALT (93-487), *In the Matter of the Application of Ameritech Ohio for Approval of an Alternative*

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2 00-942, Entry of June 1, 2000, at 3, 4.
3 00-942, Entry of August 24, 2000, at 5.
4 00-942, Entry of December 7, 2000, at 5.
5 00-942, Entry of June 1, 2000, at 4.

Form of Regulation, the collaborative brought disputed issues before the PUCO for resolution. The PUCO addressed the concerns pursuant to its issuance of the pertinent entries and entries on rehearing.[7]

On August 9, 2001, SBC Ohio filed a "Notice of Intent to File an Application Pursuant to Section 271 of the 1996 Act" (Notice). In its Notice, SBC Ohio informed the PUCO and interested entities that it intended to file an application with the FCC no sooner than January 1, 2002. On November 12, 2002, SBC Ohio filed its "Supplemental Notice of Intent to File an Application Pursuant to Section 271 of the 1996 Act". Pursuant to this filing, SBC Ohio informed the PUCO that, "in light of events which have occurred since the Notice was filed," SBC Ohio intends to file an application with the FCC no sooner than March 1, 2003.

Concurrent with its August 9, 2001, Notice, SBC Ohio filed initial affidavits in support of its assertion that it has complied with the checklist items of Section 271 of the 1996 Act (Checklist filing). SBC Ohio filed amended initial affidavits on May 6 and 13, 2002, and supplemental affidavits on July 15, 2002.

Initial comments[8] in response to SBC Ohio's August 9, 2001, Checklist filing were timely filed by NuVox Communications of Ohio, Inc. (NuVox); jointly by United Telephone Company of Ohio dba Sprint and Sprint Communications Company L.P. (collectively Sprint); jointly by the office of the Ohio Consumers'

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6 See 00-942, attorney examiner entries of June 17, and July 5, 2002.

7 See e.g., entries of August 24, and December 7, 2000, January 25, and December 20, 2001, January 30, 2003, and Entry on Rehearing of May 2, 2002.

8 Some of the filed initial comments included affidavits.

Counsel (OCC), The Appalachian People's Action Coalition (Appalachian Coalition), The Edgemont Neighborhood Coalition (Edgemont), the city of Cleveland (Cleveland), the city of Columbus (Columbus), and the city of Toledo (Toledo) (jointly Consumer Entities); The Ohio Cable Telecommunications Association (OCTA); XO Ohio Inc (XO Ohio); CoreComm Newco Inc. (CoreComm); jointly by AT&T Communications of Ohio, Inc. and TCG Ohio (collectively AT&T); WorldCom Inc. (WorldCom); jointly by The Association of Communications Enterprises (ASCENT), ICG Telecommunications, Inc. (ICG), KMC Telecom, Inc. (KMC), LDMI Telecommunications (LDMI), Time Warner Telecom of Ohio, L.P. (Time Warner), and TDS Metrocom, Inc (TDS) (collectively Joint CLECs). The PUCO notes that a number of entities filed motions for intervention. No ruling on these motions was necessary inasmuch as all interested entities were permitted to timely file comments in this proceeding.

SBC Ohio timely filed reply comments and reply affidavits on October 22, 2001, as amended on May 6, 2002. Reply comments[9] were timely filed by AT&T, Sprint, Joint CLECs, Consumer Entities, and the OCTA. On July 15, 2002, SBC Ohio filed supplemental affidavits in accordance with the attorney examiner's Entry of July 5, 2002. The supplemental affidavits were intended to address SBC Ohio's offering of existing combinations of unbundled network elements (UNE). AT&T and WorldCom each timely filed its supplemental affidavits in response to SBC Ohio's filing of July 15, 2002. Reply comments with respect to the filed supplemental affidavits were timely filed by SBC Ohio, jointly by CoreComm and LDMI, WorldCom, and Revolution Communications Company (Revolution).

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9 Some of the filed reply comments included affidavits.

On June 20, 2002, AT&T, WorldCom, CoreComm, LDMI, Allegiance Telecom of Ohio, Inc. (Allegiance), TDS, XO Ohio, ICG, and KMC (collectively joint movants) filed a joint motion to either dismiss SBC Ohio's application in this case, or hold the application in abeyance pending the outcome of Case No. 02-1280-TP-UNC (02-1280), *In the Matter of the Review of SBC Ohio's (formerly Ameritech Ohio) TELRIC Costs for Unbundled Network Elements*. Pursuant to their motion, joint movants contended that SBC Ohio is seeking to demonstrate compliance with Section 271 of the 1996 Act, while at the same time attempting to stall competition by pursuing significant increases in its existing UNE rates. In our Entry of January 30, 2003, the PUCO dismissed joint movants' motion to dismiss. The PUCO concluded that an analysis of the PUCO's consideration of the application in this case is distinguishable from the PUCO's consideration of the application in 02-1280. Specifically, the PUCO stated that its recommendation to the FCC relative to SBC Ohio's "271" application is premised on the record before it at this time, including SBC Ohio's existing UNE rates.[10] In reaching that decision, we did not intend to discount the need for the PUCO, at a later date, to engage in separate review of the previously approved total element long-run incremental costing (TELRIC) rates for SBC Ohio to ensure the reasonableness of SBC Ohio's wholesale pricing.

A. OSS

SBC Ohio is subject to a certain number of performance standards to ensure that its competitors have access to preordering, ordering and provisioning, maintenance and repair, and billing functions in a nondiscriminatory manner. To

ensure that this takes place, the PUCO established certain performance measurements and a process for which those performance measurements were to be audited by an independent third-party auditor and to be tested until SBC Ohio receives a passing report from the auditor. The results of this audit are discussed in detail in the OSS section of this report attached as Appendix A to this Report and Evaluation.

The MTP is subdivided into three test domains; the performance metrics review (PMR), the processes and procedures review (PPR), and the transaction validation and verification (TVV). The three domains are described as follows:

1. PMR

The PMR test domain is an evaluation of SBC Ohio's systems, processes, and other operational components associated with the support for performance metrics (i.e., wholesale quality of service measurements). This test is more like an extensive annual audit that will determine whether SBC Ohio has properly implemented the PUCO-ordered performance measurement standards, whether the data sources used for the computation of these standards are reliable, and whether the performance measurement reports that are posted monthly by SBC Ohio on-line are accurate.

2. PPR

The PPR test domain is an evaluation of the systems, processes, and other operation components associated with SBC Ohio's establishment and maintenance of

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10 00-942, Entry of January 30, 2003, at 13.

business relationships with competitive local exchange companies (CLEC). SBC Ohio's provisioning of continuous operational support to the business needs of Ohio CLECs in a nondiscriminatory manner is also included in this test.

3. TVV

The TVV test domain is an evaluation of SBC Ohio's systems and other operational components associated with machine-to-machine, manual, and graphical user interface (GUI) transactions. SBC Ohio's compliance with all performance measurement agreements and OSS functionalities in a nondiscriminatory manner is also included in this test.

II. SBC OHIO'S COMPLIANCE WITH SECTION 271(C)(1)(A): PRESENCE OF FACILITIES-BASED COMPETITION

In accordance with Section 271(c)(1) of the 1996 Act, SBC Ohio must demonstrate compliance with either Section 271(c)(1)(A) of the 1996 Act (Track A) or Section 271(c)(1)(B) of the 1996 Act (Track B). SBC Ohio satisfies Track A if it has one or more approved interconnection agreements with competing providers for the purpose of providing exchange service to residential and business subscribers. For the purpose of this requirement, service can be provided by competitors either exclusively over their own telephone facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier (47 U.S.C. §271[c][1][A]). SBC Ohio satisfies Track B if no competing provider has requested access and interconnection, and the company has an approved statement of the terms and conditions that the

company generally offers to provide access and interconnection to its network (47 U.S.C.§271[c][1][B]).[11]

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits[12]

SBC Ohio submits that it has satisfied Track A of the 1996 Act, in light of the existence of actual competitive alternatives for both residential and business customers (Heritage Initial Affidavit of August 9, 2001, at 3, 21). Further, SBC Ohio believes that it meets the requirement of the 1996 Act since it has entered into one or more binding interconnection agreements that have been approved under Section 252 of the 1996 Act and specify the terms and conditions under which SBC Ohio provides access and interconnection to its network facilities to one or more unaffiliated competing providers of telephone service to residential and business customers (*Id.* at 3). In support of this representation, SBC Ohio points to the fact that, as of July 2001, SBC Ohio had entered into 130 approved wireline interconnection and resale agreements in Ohio. SBC Ohio states that as of the date of its comments CLECs had already installed 37 switches in Ohio, which equates to enough switching power to serve 100 percent of SBC Ohio's customers in Ohio (*Id.* at 5).

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11 Pursuant to Case No. 96-1057-TP-UNC, *In the Matter of the Petition of Ameritech Ohio for Approval of a Statement of Generally Available Terms and Conditions Pursuant to the Telecommunications Act of 1996*, SBC Ohio filed its statement of generally available terms and conditions. This filing now appears moot in light of SBC Ohio's election to rely on Track A as the basis for its request for Section 271 relief.

SBC Ohio represents that facilities-based carriers with interconnection agreements are providing service in Ohio to both residential and business subscribers by building their own networks, leasing UNEs, purchasing the unbundled network element platform (UNE-P) from SBC Ohio, resale of SBC Ohio's retail service, or via a combination of these approaches (*Id.* at 6, 8). SBC Ohio provides collocation to facilities-based carriers. SBC Ohio has existing collocation arrangements[13] in SBC Ohio central offices, providing CLECs with the capability to serve 93 percent of SBC Ohio's business customers and 88 percent of SBC Ohio's residential customers, encompassing both the urban and rural segments of SBC Ohio's service territory. These carriers use collocation as one of the mechanisms for obtaining interconnection and access to UNEs. SBC Ohio surmises that the existence of collocated carriers and the locations selected by those carriers for their collocation (i.e., collocating in wire centers that serve a large portion of the business and residential lines provided by SBC Ohio) signifies the existence of, or the potential for, facilities-based competition. As of June 2001, SBC Ohio had completed 937 physical and 75 virtual collocations (*Id.* at 5, 14, 15).

SBC Ohio specifically identifies 43 facilities-based carriers that were providing service in its service territory as of August 2001. It believes that 24 of the carriers provide local service. [14] In particular, SBC Ohio represents that six of these CLECs are offering telephone exchange service to both business and residential customers,

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12 The comments and affidavits filed by SBC Ohio, as well as those of the interested entities were current as of the date of their respective filings.

13 According to SBC Ohio operational physical collocation arrangements grew 141 percent from June 2000 to June 2001.

14 SBC Ohio submits that the remaining carriers, which appear to provide facilities-based services such as DSL or data services, are not precluded from deploying voice grade service (*Id.* at 6).

either exclusively or predominantly over their own telephone exchange facilities (*Id.* at 3). These carriers and their corresponding interconnection agreements are as follows: (1) AT&T Communications of Ohio Inc. (Case Nos. 96-752-TP-ARB and 00-1734-TP-AEC); (2) Buckeye TeleSystem, Inc. (Buckeye TeleSystem) (Case Nos. 97-1645-TP-NAG and 01-172-TP-AEC); (3) CoreComm (Case Nos. 97-799-TP-ARB and 00-600-TP-AEC); (4) ICG (Case Nos. 96-611-TP-UNC and 00-1685-TP-AEC; (5) WorldCom and its affiliates MCImetro Access Transmission Services, Inc. (Case Nos. 96-888-TP-ARB and 98-1409-TP-AEC), MCI WorldCom Communications, Inc. (Case Nos. 96-565-TP-UNC and 97-292-TP-NAG),[15] and Brooks Fiber Communications, Inc., (Case No. 96-828-TP-UNC); and (6) XO Ohio (Case Nos. 97-69-TP-NAG and 00-1129-TP-AEC) (*Id.* at Attachment C-1).

SBC Ohio estimates the number of lines served by facilities-based CLECs by considering the number of interconnection trunks used by facilities-based CLECs to connect their switching facilities to SBC Ohio's end office or tandem switches for the purpose of carrying traffic between CLEC and SBC Ohio customers. As of June 2001, CLECs in Ohio had installed 219,916 interconnection trunks in Ohio, a 32 percent increase from the prior year. Based on its estimates, SBC Ohio believes that, as of June 2001, the total number of facilities-based CLEC lines served by these interconnection trunks was 604,769 (*Id.* at 11). This number does not include lines served by CLECs using UNE-P arrangements in light of the fact that UNE-P arrangements do not require interconnection trunks since the traffic does not have to be transported from CLEC switch to the SBC Ohio switch (*Id.*). SBC Ohio estimates that, as of June 2001, the number of UNE-P lines served by other carriers in Ohio was

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15 These agreements were with MCI WorldCom Communications' predecessor MFS Intelnet.

29,356. Therefore, SBC Ohio opines that the aggregate number of facilities-based lines served by CLECs in June 2001 was 634,125 (*Id.* at 12).

Another method utilized by SBC Ohio for the purpose of demonstrating the existence of local competition in its Ohio market is the facilities-based E9-1-1 listings. According to SBC Ohio, facilities-based CLECs that utilize their own switches to provide service to their end users are responsible for directly inputing telephone numbers for those customers into the E9-1-1 database and for designating whether the service provided to those telephone numbers is business or residential. Facilities-based providers are identified in the E9-1-1 database by a specific company identification code (*Id.* at 9).

SBC Ohio represents that, while the E9-1-1 database is a useful tool in determining the number of lines served on a facilities basis, it understates the actual number of lines served by CLECs in light of the fact that it does not include lines that CLECs serve by leasing SBC Ohio UNE switch ports or UNE-P arrangements since these lines are physically served off of the SBC Ohio switch (*Id.* at 9, 10). According to SBC Ohio, in June 2001, the E9-1-1 database indicated that CLECs were serving 281,794 access lines over their own facilities (*Id.* at 10). As of the same date, SBC Ohio represents that CLECs served 29,356 lines over UNE-P. Together, these statistics demonstrate that CLECs were serving at least 311,150 access lines on a facilities-basis in Ohio as of June 2001. SBC Ohio contends that this number represents a conservative estimate of the CLECs' facilities-based lines. SBC Ohio believes that this is particularly true in light of the fact that the E9-1-1 database assessment does not include customer access lines from which outbound calls cannot be made (e.g., call centers, reservationists, telemarketing centers, and information service providers). In

addition, SBC Ohio references the fact that CLECs may make errors in entering E9-1-1 listings into the E9-1-1 database. SBC Ohio insinuates that such errors may result in an underestimation of the CLECs' facilities-based lines (*Id.* at 10).

Regardless of whether the estimates of facilities-based competition are premised on E9-1-1 data or the number of interconnection trunks, SBC Ohio believes that the numbers demonstrate that subscribers have a choice in local service providers, and that CLECs have established a presence in the marketplace (*Id.* at 13). In addition to SBC Ohio's referenced support for facilities-based competition, SBC Ohio states that numerous CLECs provide service in its service territory on a resale basis. According to SBC Ohio, as of September 30, 2000, CLECs were reselling SBC Ohio's local service in 90 percent of its wire centers. SBC Ohio notes that some CLECs providing facilities-based services to businesses also provide resold services to residential customers. SBC Ohio opines that the existence of resold residential services demonstrates compliance with Track A of Section 271 of the 1996 Act (*Id.* at 16).

In addition to its demonstration of the level of competitive local activity in the state of Ohio, SBC Ohio projects that, based on the experiences of SBC in other states, competition in both the local and long distance markets will continue to increase upon SBC Ohio's entry into the long distance market (*Id.* at 17-21).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T questions the significance of SBC Ohio's representations regarding the level of local service competition in its service territory. AT&T represents that the competitive information relied upon in SBC Ohio's affidavits (i.e., Heritage Initial Affidavit) was not made available to other entities in order to allow for the opportunity to substantiate SBC Ohio's claims regarding the level of competition. AT&T believes that SBC Ohio's estimation of the quantity of facilities-based competition in Ohio is overstated; similar to the experiences of the Michigan Public Service Commission (MPSC) 271 proceeding and the conclusions reached by the MPSC staff (Turner Initial Affidavit of September 20, 2001, at 3, 4, citing to the MPSC Staff Report, Results of the 2nd Competitive Market Conditions Survey, May 23, 2001).

To the extent that there is local competition in the state of Ohio as of September 2001, AT&T concludes that it is concentrated in a very limited segment of customers, that being the internet service provider (ISP) sector. AT&T asserts that, even using SBC Ohio's flawed data, only 2.5 percent of SBC Ohio's local traffic is being served by CLECs. Further, AT&T posits that there are systemic problems with the calculations that SBC Ohio has utilized to estimate the level of local competition and surmises that a review of more reliable data will demonstrate that much less local traffic is actually served by CLECs than can be derived from SBC Ohio data reporting. To this point, AT&T recommends that the PUCO should conduct an independent investigation into the level of competition in SBC Ohio's service territory (*Id.* at 4, 5).

In support of its contention that, at the time of the filing of SBC Ohio's Notice there was only limited facilities-based competition, AT&T focuses its attention to quantity of interconnection trunks terminating on SBC Ohio's network. While SBC Ohio has identified 219,916 interconnection trunks[16] between itself and CLECs in Ohio and that approximately 565,695 million minutes of local traffic are exchanged across those trunks on a monthly basis,[17] AT&T submits that, when viewed in the appropriate context, these numbers do not support the conclusion of a thriving local exchange market (*Id.* at 7). Based on available FCC data for 2000, AT&T estimates that SBC Ohio would switch 89.9 billion minutes of local use in 2001 (7.5 billion minutes per month). As a result, based on SBC Ohio's own numbers, AT&T concludes that, inasmuch as CLEC traffic only represents 7 percent of local usage in Ohio, facilities-based competition is in such early stages in its development that it cannot be relied upon to provide a check on the anticompetitive tendencies of local exchange service monopolies, such as SBC Ohio, and cannot support a conclusion that the Ohio local market is irreversibly opened to competition (*Id.* at 7, 8; AT&T Initial Comments of September 20, 2001, at 20).

AT&T raises a number of concerns regarding SBC Ohio's estimated CLEC access line count based on a theoretical ratio of the number of access lines to the number of interconnection trunks and SBC Ohio's estimation of the number of CLEC business and residential access lines based on the E911 database (Turner Initial Affidavit at 15-18).

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16 Referencing Heritage Initial Affidavit at 11.

17 Referencing Attachment A to Heritage Initial Affidavit.

AT&T believes that rather than SBC Ohio's reliance on interconnection trunks to determine the level of CLEC competitive entry in Ohio, the volume of minutes transversing the local interconnection trunks is the more appropriate tool for measuring the level of competition in the local market, inasmuch as it would account for both those customers served via unbundled loops with CLEC switches as well as those customers that are served exclusively by the CLECs' networks (*Id.* at 10).

Further, AT&T points out that there is a disparity between the level of the traffic originated by SBC Ohio and terminated by CLECs, and the level of traffic originated by CLECs and terminated by SBC Ohio. As a result, AT&T concludes that the majority of CLECs in SBC Ohio's service territory are targeting customers who are significant net terminators of traffic (ISPs). Based on SBC Ohio's own data, AT&T represents that the portion of facilities-based local competition that addresses non-ISP users in Ohio is 2.5 percent (*Id.* at 9). Therefore, AT&T opines that "it is impossible for competition in a small and narrow segment of the local exchange market to create the type of market discipline needed to replace regulatory constraints" (*Id.* at 10).

With respect to SBC Ohio's reliance on the number of unbundled loops served by CLECs in SBC Ohio's service territory, AT&T points out that according to SBC Ohio, only 139,133 unbundled loops were utilized by CLECs in Ohio as of the filing of SBC Ohio's Notice. AT&T concludes that, as of the time of the filing of SBC Ohio's Notice, this number signifies that only 2.2 percent of the access lines in Ohio have been leased from SBC Ohio as unbundled loops (*Id.* at 11).

In regard to SBC Ohio's reliance on the fact that there are 37 CLEC switches in its service territory (amounting to 11.53 percent of the total local exchange switches in SBC Ohio's service area), AT&T discounts this contention in light of the fact that there is no real relationship between the number of CLEC switches and the number of lines that CLECs can or will serve. In addition, AT&T contends that SBC Ohio has excess switch capacity and, thus, has every incentive to erode the thin margins of CLECs, if SBC Ohio is allowed premature entry into the long distance market (*Id.* at 13).

Relative to SBC Ohio's reliance on the level of resale competition, AT&T points out that the SBC Ohio's cited access line loss due to resale competition is only slightly over one percent of SBC Ohio's total access lines in Ohio. In addition, according to AT&T, these resold lines actually represent 24.4 percent of all competition in Ohio. AT&T asserts that resale should not be considered as a mechanism to provide effective competition for SBC Ohio, especially in light of the restrictive nature of resale offerings (*Id.* at 13, 14).

AT&T disputes any attempt of SBC Ohio to analogize the experiences of other states relative to the development of local competition subsequent to the granting of Section 271 relief. AT&T contends that it was the development of pro-competitive rules in states such as Texas, and not the issuance of Section 271 relief, that resulted in any growth of local competition (*Id.* at 18, 19).

With respect to SBC Ohio's assertion that there are 43 companies operating as facilities-based providers in Ohio, AT&T concludes that many of these are either in bankruptcy or experiencing financial difficulties (*Id.* at 22, 23). AT&T dismisses SBC

Ohio's representation that there are a number of CLECs with the potential to be viable competitors of SBC Ohio. AT&T believes that in actuality, only WorldCom and itself could be considered as viable "Track A" competitors to SBC Ohio (*Id.* at 24-31).

2. WorldCom's Initial Comments/Affidavits

WorldCom contends that SBC Ohio has failed to demonstrate the rapid growth of competition in the state of Ohio and that any claims of CLEC competition are completely untrue (WorldCom Initial Comments of September 20, 2001, at 5). WorldCom questions the relevancy of SBC Ohio's diagnostic methods used to depict the existence of CLEC competition, including the use of the E9-1-1 database information in order to extrapolate CLEC line counts. WorldCom believes that even SBC Ohio's most conservative estimation of CLEC competition (which reflects that, at most, SBC Ohio's loss of market share is no greater than approximately 6 percent) is to high (*Id.* at 6).[18]

WorldCom represents that different conclusions regarding the level of competition would be reached if the CLECs, themselves, had provided company specific data, rather than the PUCO relying on SBC Ohio's extrapolation of different measurements. WorldCom references a study conducted by various CLECs, which indicated that, as of June 2001, fewer than 200,000 business and residential access lines were served by CLECs in Ohio. Specific to itself, WorldCom contends that SBC Ohio's data overstated WorldCom's actual operating information by thousands of lines. Specifically, WorldCom points out that at the time of its initial comments, it

did not provide service to any residential customers. Therefore, WorldCom rejects SBC Ohio's representation that "WorldCom offers service largely over its own facilities to tens of thousands of business and residential customers"[19] (*Id.* at 6, 7).

3. Consumer Entities' Initial Comments/Affidavits

Consumer Entities contend that, prior to being granted Section 271 relief, SBC Ohio is required to demonstrate that there is real facilities-based telephone exchange service competition for residential and business customers. Specifically, they believe that SBC Ohio must meet the requirement of Section 271(c)(1)(A) of the 1996 Act that "such telephone exchange service . . . be offered by such competing providers either exclusively over their own telephone service facilities or predominantly over their own facilities in combination with resale . . ." (Consumer Entities' Initial Comments of September 20, 2001, at 17). Consumer Entities assert that this requirement can only be satisfied if SBC Ohio's performance demonstrates that residential subscribers have a meaningful choice of facilities-based CLECs (*Id.* at 18).

Although SBC Ohio has represented (i.e., Heritage Initial Affidavit) that it has satisfied Track A, as a result of the operations of six CLECs (AT&T, Buckeye Telesystems, CoreComm, ICG Communications, WorldCom, and XO Ohio), Consumer Entities contend that for five of these CLECs, their residential operations are nonexistent or totally insignificant as of the date of SBC Ohio's Notice. While Consumer Entities recognize that CoreComm is a facilities-based carrier that serves both residential and business customers, they point out that less than three-quarters

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18 WorldCom relies on the data incorporated in Table 1 of Heritage Initial Affidavit.

19 Citing to SBC Ohio's Initial Brief at 7.

of CoreComm's service to residential customers is facilities-based. Therefore, Consumer Entities assert that CoreComm's operations do not satisfy the requirement of Section 271(c)(1)(A) of the 1996 Act, that residential customers be offered service exclusively or predominantly over CoreComm's facilities (*Id.* at 26-28) Consumer Entities further cites also to the statewide CLEC reports prepared by the PUCO staff (staff) and filed by Verizon North in Case No. 00-1532-TP-COI, *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*.

Consumer Entities also question whether SBC Ohio has complied with the requirement of Section 271(c)(1)(A) that it has entered into one or more binding interconnection agreements that have been approved pursuant to Section 252 of the 1996 Act. Specifically, they question whether SBC Ohio considers its interconnection agreements to be binding, especially in light of the number of pending complaint cases related to SBC Ohio's interconnection agreements (*Id.* at 28-30).[20]

Finally, Consumer Entities advocate that there cannot be a finding that the market is open until: (1) there is a determination that OSS is functioning at commercial volume levels; (2) that an appropriate performance assurance plan with significant penalties is in place; and (3) that there has been compliance with the performance assurance plan for three months without significant penalties, using ongoing performance data (*Id.* at 51).

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20 See *CoreComm Newco, Inc. v. Ameritech Ohio*, Case No. 01-1528-TP-CSS; *Ameritech Ohio v. CoreComm Newco*, Case No. 01-1721-TP-CSS, as well as a number of other complaint cases involving SBC Ohio as delineated in footnotes 42-47 of Consumer Entities' September 20, 2001, Initial Comments).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

With respect to the aforementioned six telecommunications providers, SBC Ohio contends that none of these CLECs have objected to being identified as a facilities-based provider of local service for business subscribers. While SBC Ohio acknowledges that some of these providers have objected to its estimates of their residential operations, it asserts that CoreComm has confirmed that it is a facilities-based provider of local exchange service to approximately 44,000 residential customers in SBC Ohio's service territory (Heritage Reply Affidavit of October 22, 2001, at 5, citing CoreComm's Initial Comments of September 20, 2001, at 1). In addition, SBC Ohio references XO Ohio's acknowledgement that it provides facilities-based service to business customers (SBC Ohio's Reply Comments of May 6, 2002, at 13, citing XO Ohio's Initial Comments of September 20, 2001, at 3). Therefore, SBC Ohio believes that there is no dispute that it has satisfied Track A with respect to the offering of service to residential and business subscribers (Heritage Reply Affidavit at 5).

SBC Ohio responds to Consumer Entities' contention, discussed *infra*, that CoreComm's operations do not signify, as required by the Section 271(c)(1)(A) of the 1996 Act, service offered by competing carriers predominantly over their own exchange facilities. SBC Ohio believes that CoreComm's provisioning of service satisfies Section 271(c)(1)(A) of the 1996 Act, inasmuch as CoreComm's facilities-based operations are the most frequent method utilized by CoreComm for the provisioning of residential service (*Id.* at 5, 6). Further, SBC Ohio points out that

Section 271 of the 1996 Act provides for, and the FCC permits, the provisioning of local service pursuant to facilities-based operations in combination with the resale of telecommunications services from another carrier (*Id.* at 5, 6).

Contrary to the assertions of the Joint CLECs, SBC Ohio opines that Section 271(c)(1)(A) of the 1996 Act, and the FCC in its implementation of the 1996 Act, does not require a specific market share to be lost prior to satisfying Track A. The company believes that it has demonstrated that one or more facilities-based CLECs are providing service to more than a de minimus number of business and residential customers (*Id.* at 7, 10). SBC Ohio believes that its competitors are growing in both revenues and the number of access lines to which they provision service (*Id.* at 7-13). As support for this conclusion, SBC Ohio references the "Year 2000 Competitive Report Using the Diagnostic Method for Assessing Competition" filed in 98-1082 on April 2, 2001 (*Id.* at 11, 12). While SBC Ohio recognizes that some facilities-based CLECs may be experiencing financial difficulties, it believes that there will continue to be facilities-based competition for residential and business customers (*Id.* at 32).

SBC Ohio rejects AT&T's recommendation that minutes of use be utilized as a more appropriate measurement of local competition. SBC Ohio posits that as long as a line is installed, it is irrelevant, for the purpose of Section 271(c)(1)(A) of the 1996 Act, as to the volume of traffic over the access line (*Id.* at 16).

2. Consumer Entities' Reply Comments/Affidavits

Consumer Entities dispute SBC Ohio's claim that CoreComm constitutes a CLEC providing facilities-based residential service in Ohio. Specifically, Consumer

Entities emphasize that, although CoreComm has indicated that it serves 44,000 residential access lines in SBC Ohio's service territory, it fails to specify how many residential subscribers are served through facilities and how many are served via resale. In addition, Consumer Entities question the viability of CoreComm as facilities-based competitor in light of its financial difficulties (Consumer Entities' Reply Comments of October 22, 2001, at 6).

D. PUCO's Discussion

Pursuant to Section 271(c)(1)(A) of the 1996 Act, a BOC meets the requirements of this subparagraph if "it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in Section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."

In its Memorandum Opinion and Order, *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Michigan*, CC Docket 97-137, FCC 97-298 (August 19, 1997), at ¶ 86, the FCC concluded that, when a Bell operating

company relies on more than one competing provider, Section 271(c)(1)(A) of the 1996 Act, does not require each carrier to provide service to both residential and business subscribers.

The record in this case reflects that, as of August 9, 2001, the date of SBC Ohio's first Notice, the company had entered into 130 wireline interconnection and resale agreements that were filed and approved by the PUCO (Heritage Initial Affidavit at 5). In particular, six companies were specifically identified as offering telephone exchange service to both business and residential customers, either exclusively or predominantly over their own telephone exchange facilities (*Id.* at 3). These companies currently remain as certified CLECs in Ohio with existing interconnection agreements. The PUCO believes that the operations of these companies via UNE loops and UNE-P signify the offering of telephone exchange service either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications service of another carrier. The PUCO agrees with SBC Ohio's contention that, at a minimum, CoreComm's operations constitute the offering of residential telephone exchange service, while the other providers' operations, at a minimum, constitute the offering of business telephone exchange service.[21]

While the PUCO believes that neither the 1996 Act, nor the FCC requires that CLECs obtain specific market shares for the purpose of Track A compliance, regardless of the methodology utilized (e.g., interconnection trunks, E9-1-1 listings,

minutes of use etc.,) facilities-based CLECs are providing service to more than a de minimus number of business and residential customers (*Id.* at 4, 5).[22] This belief is consistent with the "Executive Summary of the Year 2002 Competition Report Using the Diagnostic Method for Assessing Competition," filed with the PUCO on March 31, 2003, in 98-1082. SBC Ohio reported that from September 2001 to September 2002, competitors had gained sufficient

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21 The PUCO notes that, since the filing of the initial Notice, additional providers, such as WorldCom and AT&T, have commenced the offering of residential local service.

22 For the time frame June 2001, depending on the methodology relied upon, estimates of residential facilities-based CLEC access lines ranged from 22,825 - 28,233 and business facilities-based CLEC access lines ranged from 226,447 - 605,892.

access lines to cause SBC Ohio to sustain retail access line losses for the second consecutive year (Executive Summary at 1). For the year 2002, CLECs had an estimated 516,000 access lines for residential and business customers (*Id.* at 2, 9). These CLECs utilized diverse entry strategies, including self-supplied fiber networks, combinations of unbundled elements and self-supplied switches, UNE-P, resale, and line sharing (*Id.* at 2).

E. PUCO Recommendation

Based on the above, the PUCO recommends that the FCC find that SBC Ohio has satisfied the criteria required for Track A of Section 271(c)(A)(1) of the 1996 Act.

III. CHECKLIST ITEM 1 - INTERCONNECTION

Section 271(c)(2)(B)(i) of the 1996 Act requires a Section 271 applicant to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the 1996 Act. Section 251(c)(2), among other things, requires SBC Ohio to provide for interconnection at any technically feasible point within its network, for the transmission and routing of telephone exchange service and exchange access. The interconnection is to be at least equal in quality to that provided by SBC Ohio to itself or to any subsidiary, affiliate, or any other party to which SBC Ohio provides interconnection, and pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the pricing rules in Section 252(d)(1) of the 1996 Act.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) Interconnection Trunking

According to SBC Ohio, a BOC meets the requirement of the first checklist item if it offers interconnection in accordance with Sections 251(c)(2) and 252(d)(1) of the 1996 Act (Deere Initial Affidavit of May 6, 2002, at 6, 7). Mr. Deere posits that SBC Ohio has fully complied with these requirements as described in his affidavit.

In terms of methods of interconnection which CLECs may employ to interconnect with SBC Ohio's network, Mr. Deere states that SBC Ohio provides four alternatives and will negotiate other technically feasible methods of interconnection (*Id.* at 7). The four interconnection alternatives include: fiber meet interconnection, physical collocation interconnection, virtual collocation interconnection, and the leasing of SBC Ohio facilities.

According to Mr. Deere, a fiber meet arrangement may be negotiated at any "mutually agreeable, economically and technically feasible" point between the CLEC's premises and an SBC Ohio tandem or end office (*Id.*). Mr. Deere states that the companies jointly engineer fiber meets and that there are four basic fiber meet designs. In the first design, the interconnection point is located at a mutually agreeable location midway between SBC Ohio and the CLEC. The point of interconnection (POI) in this design is at a fiber termination panel in the midpoint meet (*Id.* at 8). The second design entails the CLEC providing enough fiber cable to the manhole location at SBC Ohio's end office or tandem switch so that SBC Ohio can

pull the cable into its vault for termination at SBC Ohio's distribution frame. The POI in this design is located at the SBC Ohio designated manhole location (*Id.*). In the third design, SBC Ohio provides fiber cable to the CLEC designated manhole at the CLEC's location. SBC Ohio provides sufficient cable in order for the CLEC to run the fiber cable from the manhole and terminate on the CLEC's distribution frame. The POI in this design is located at the CLEC designated manhole location (*Id.* at 8, 9). The final design entails the CLEC and SBC Ohio each providing fiber cables between their locations. Mr. Deere states that the companies work cooperatively to terminate each other's fiber in order to provision a SONET system. The POI in the fourth design is SBC Ohio's location (*Id.* at 9).

SBC Ohio states that interconnection via the aforementioned designs, or other technically feasible methods, is available at the trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. In addition, SBC Ohio provides access to the line side of the SBC Ohio switch by offering the local switch UNE (*Id.* at 10). Furthermore, SBC Ohio and the CLEC may mutually agree to use another technically feasible form of interconnection (*Id.* at 12). CLECs also have the option of interconnecting at only one point within a LATA and may do so at the tandem (*Id.*. at 12, 13). SBC Ohio posits that the various offered interconnection arrangements fulfill SBC Ohio's obligations under the 1996 Act to provide interconnection at the same level of quality that SBC Ohio provides comparable interconnection to itself and to its affiliates by using the same facilities, interfaces, technical criteria and service levels that SBC Ohio provides to its own retail operations (*Id.*).

In terms of interconnection trunking arrangements, SBC Ohio allows CLECs to use physical facilities obtained from SBC Ohio to provision trunk groups for local, intraLATA, and interLATA traffic between a CLEC switch and an SBC Ohio tandem or end office switch (*Id.* at 14). Mr. Deere explains that, where SBC Ohio has a combined local tandem and access tandem in a LATA, intraLATA toll and local traffic shall be combined on a single local interconnection trunk group for calls destined to or from all end offices that subtend the tandem. Furthermore, according to Mr. Deere, interLATA traffic between a CLEC switch and the tandem shall be transported over a "meet point" trunk group separate from local and intraLATA toll traffic (*Id.*).

Mr. Deere explains that, when CLECs choose to interconnect directly to an SBC Ohio end office, local traffic may terminate over a direct trunk group to the end office. These direct trunks may be provisioned as one-way or two-way; however, intraLATA toll traffic must be routed to an access tandem over a separate trunk group (*Id.* at 15). Furthermore, SBC Ohio permits interLATA traffic to be transported between the CLEC central office and the SBC Ohio access tandem over a "meet point" trunk group that is separate from local and intraLATA toll traffic. When SBC Ohio has more than one access tandem in a local exchange area or LATA, a CLEC must establish an interLATA trunk group to each SBC Ohio access tandem where the CLEC has "homed" its NXX code (*Id.*). Finally, Mr. Deere states that additional trunk groups may be established for services such as 800/888/877, E911, mass calling, and operator services access.

According to Mr. Deere, all trunk forecasting and servicing for local and intraLATA toll trunk groups is based upon the same industry standard objectives

that SBC Ohio uses for its own trunk groups (*Id.* at 15). SBC Ohio forecasts traffic in order to determine the amount of traffic that will be handled by each central office and the number of trunks that will be required during the forecast period. Mr. Deere explains that SBC Ohio accepts quarterly forecasts from the CLECs to incorporate CLEC requirements into SBC Ohio's engineering forecasts (*Id.* at 16). Once SBC Ohio completes its own forecast, it will compare it to the CLEC's forecast and discuss any serious discrepancies with the CLEC; however, the decision of how many CLEC trunks to forecast is at the discretion of the CLEC (*Id.* at 17, 18). SBC Ohio represents that it has been able to meet the requested due dates for most orders of CLEC trunks (*Id.* at 18).

SBC Ohio discusses its forecasting process and procedures based on mechanized traffic tracking and trunk and tandem switch capacity. Mr. Deere also explains the engineering principles that apply to the addition of trunk terminations to trunks and local and tandem switches. Finally, Mr. Deere states that, when the total capacity of an existing switch becomes exhausted, and a new switch must be added to SBC Ohio's network, planners are notified 24 to 36 months in advance depending on the switch type (*Id.* at 19-21).

(b) Collocation

According to the affidavit of SBC Ohio's Scott Alexander, SBC Ohio provides collocation to CLECs as one means of obtaining interconnection and access to network elements on an unbundled basis (Alexander Initial Affidavit of May 6, 2002, at 10). Mr. Alexander states that such collocation is in accordance with Section 251(c)(6) of the 1996 Act, 47 C.F.R 51.321 and 51.323. SBC Ohio contends that it has fully implemented the FCC's collocation requirements from the advanced services

order[23] and the advanced reconsideration order[24] through legally binding interconnection agreements (*Id.* at 11). A CLEC may apply for collocation even while the CLEC's certification is still pending, or before the CLEC and SBC Ohio have entered into a final interconnection agreement (*Id.*).

SBC Ohio addresses collocation job intervals and the processes and procedures to ensure that collocation arrangements are available on terms that are just, reasonable, and nondiscriminatory. These standards include the length of time to process an application for collocation. SBC Ohio represents that its established practices are consistent with the criteria in the FCC's *Advanced Services Reconsideration Order* and the PUCO's determinations in 98-1082 and 00-942 regarding SBC Ohio's performance measures (*Id.*). Another standard, implemented by SBC Ohio is the notification of space availability. SBC Ohio notifies a requesting collocator whether its request for collocation space has been granted or denied within ten days of submission of a completed application (*Id.* at 12). Furthermore, SBC Ohio states that it provides specific collocation arrangement construction intervals of 90 days for active physical collocation, caged shared collocation, cageless, and virtual collocation space. For inactive collocation space, SBC Ohio provides a 180-day interval for caged collocation (*Id.* at 12, 13).

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23 First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Service, Offering Advanced Telecommunications Capability*, 14 FCC Rcd. 4761 (1999) (hereinafter *Advanced Service Order*).

24 Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd. 17806 (2000) (hereinafter *Advanced Services Reconsideration Order*).

In addition, SBC Ohio offers various forms of physical collocation including: caged, shared caged, cageless, and physical collocation at a location adjacent to its central office when space for physical collocation is legitimately exhausted. The equipment permitted to be collocated by SBC Ohio includes equipment for the purpose of transmitting and routing telephone exchange service or exchange access or for obtaining access to SBC Ohio's UNEs (*Id.* at 14). A CLEC obtaining physical collocation from SBC Ohio is provided access to a copy of a handbook for physical collocation and a technical document concerning collocation installation via the CLEC on-line web site. These documents contain specific details for physical collocation including insurance requirements, equipment standards, billing details, liability issues, quotes, and intervals for various activities throughout the application process (*Id.*).

According to SBC Ohio, caged collocation is available to CLECs as an individual enclosure as small as the minimum size necessary to house and maintain a single rack or bay of equipment (*Id.* at 15). Caged shared collocation is another option for collocation offered by SBC Ohio. Mr. Alexander describes caged shared collocation as caged collocation space shared by two or more collocators where SBC Ohio prorates the charges for site conditioning and construction of the shared cage and allocates the charges to each collocator. Furthermore, a CLEC has the ability to contract with other CLECs to share its collocation cage in a sublease-type arrangement (*Id.* at 16).

Other forms of collocation available to CLECs include cageless collocation and adjacent structure collocation (*Id.*). SBC Ohio provides cageless collocation space in single bay increments and allows collocators direct access to their equipment 24

hours a day, 7 days a week without the need for a security escort (*Id.*). Furthermore, Mr. Alexander explains that, when space is legitimately exhausted in an SBC Ohio eligible structure, CLECs are permitted to collocate in adjacent controlled environmental vaults or similar structures, to the extent technically feasible (*Id.*). Finally, Mr. Alexander states that, SBC Ohio will consider requests for other physical collocation arrangements and will provide such arrangements to the extent technically feasible (*Id.* at 17).

When there is insufficient space to satisfy a collocator's request for physical collocation in a particular central office, SBC Ohio will provide the CLEC with a letter within ten days of the completed application (*Id.*). According to Mr. Alexander, a copy of the denial is also sent to the PUCO staff. The CLEC may request to tour the premises within ten days of this notification (*Id.* at 18). Furthermore, in accordance with FCC rules, SBC Ohio maintains a publicly available document on the Internet that identifies any premises with no remaining physical collocation space. In addition, prior to submitting an application for physical collocation, CLECs may request a report for the central office that specifies the following: (1) the amount of collocation space available; (2) the number of current collocators; (3) any modifications in the use of the space since the last report; and (4) measures SBC Ohio is taking to make additional space available (*Id.*). SBC Ohio applies nondiscriminatory standards for space reservation, including space reserved by itself or its affiliates. Finally, Mr. Alexander notes that, in order to increase the amount of space available, SBC Ohio will, upon reasonable request of the collocator or upon an order of the PUCO, remove obsolete and unused equipment from its premises when space is not available (*Id.* at 19).

With respect to the security measures employed by SBC Ohio in physical collocation arrangements. Mr. Alexander avers that the security measures are reasonable, consistent with the FCC's collocation rules, and are no more stringent than the security measures SBC Ohio maintains on its own premises (*Id.*). According to SBC Ohio, CLEC employees are required to undergo the same level of security training as SBC Ohio employees or third-party contractors. The training information is provided to the CLECs, who provide employees with their own security training (*Id.* at 20). Mr. Alexander points out that SBC Ohio may elect to erect an interior security partition to separate SBC Ohio's own equipment and recover those costs consistent with the FCC's rules (*Id.*). CLECs with physical collocation have access to their collocated equipment 24 hours a day, seven days a week without a security escort. Furthermore, collocators have reasonable access to restroom facilities and parking (*Id.*).

Regardless of the availability of physical collocation, SBC Ohio provides virtual collocation where the CLEC furnishes and SBC Ohio maintains and repairs the virtually collocated equipment (*Id.* at 21). SBC Ohio utilizes the same engineering practices for virtually collocated equipment as it does for its own similar equipment and will maintain and repair virtually collocated equipment at the direction of the collocator (*Id.* at 21, 22).

(c) Pricing

Dr. Kent Currie submitted an affidavit on behalf of SBC Ohio to support its costing and pricing methodologies for interconnection. Dr. Currie explains that Section 252(d)(2) of the 1996 Act requires that prices for interconnection be based

upon the cost of providing network elements and that such prices may include a reasonable profit (Currie Initial Affidavit of August 9, 2001, at 4). According to Dr. Currie, the FCC has determined that TELRIC is the appropriate method for identifying costs on which carrier-to-carrier prices should be based (*Id.*). Further, Dr. Currie states that SBC Ohio submitted its initial TELRIC studies to the PUCO on August 12, 1996, and these studies and the subsequently submitted cost studies were the subject of extensive hearings and additional hearing phases (*Id.* at 4-6). According to Dr. Currie, the PUCO staff filed a letter on May 27, 1999, in Case No. 96-922-TP-COI (96-922), *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, stating that the TELRIC rates submitted by SBC Ohio were in compliance with the PUCO's orders. On June 9, 1999, SBC Ohio filed the final TELRIC rates with the PUCO (*Id.* at 6). SBC Ohio represents that, since 1999, it has filed TELRIC studies with the PUCO concerning shared transport, loop conditioning, UNE-P, digital subscriber loop (DSL and xDSL), line sharing, loop information, and shared and cageless collocation (*Id.* at 6, 7). Dr. Currie avers that all of SBC Ohio's TELRIC cost studies are fully compliant with FCC rules and applicable PUCO orders (*Id.* at 7-9).

(d) Quantities of Interconnection Trunking and Collocation

In support of its claim that it has satisfied Checklist Item 1 through its nondiscriminatory offering of interconnection, SBC Ohio provided the initial affidavit of Deborah Heritage. As discussed *supra*, Ms. Heritage indicates that as of the end of June 2001, CLECs in Ohio had installed 219,916 interconnection trunks (Heritage Initial Affidavit at 11). Furthermore, Ms. Heritage extrapolates that the

total number of facilities-based CLEC access lines served by these trunks, under a conservative approach of 2.75 lines per trunk, is 604,769 access lines. In addition, at the end of June 2001, SBC Ohio had completed 937 physical and 75 virtual collocations in Ohio at the end of June, 2001 (*Id.* at 15). Taking into account the completed collocations, SBC Ohio estimates that facilities-based CLECs are able to serve 88 percent of SBC Ohio's residential access lines and 93 percent of the business access lines (*Id.* at 16).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T presented the affidavit of Daniel Noorani to refute SBC Ohio's position that it has met the interconnection checklist item with regard to interconnection. Mr. Noorani states that CLECs use collocation as one of the primary methods of interconnection and, as such, it is critical for CLECs to have the ability to access UNEs (Noorani Initial Affidavit of September 20, 2001, at 4). Mr. Noorani avers that the FCC has ruled that collocation should be made available on terms that are just, reasonable, and nondiscriminatory.

With regard to the collocation of mixed-use equipment, AT&T believes that SBC Ohio has failed to meet its obligation to permit the collocation of such equipment. Specifically, Mr. Noorani claims that SBC Ohio has failed to acknowledge AT&T's right to collocate mixed-use equipment (*Id.* at 3). Mr. Noorani points out that prior to the filing of Mr. Alexander's initial affidavit, the FCC adopted

an order in CC Docket 98-147,[25] that would permit the collocation of equipment that performs both switching and routing functions (*Id.* at 6, 7). AT&T is uncertain as to whether SBC Ohio intends on complying with this FCC order (*Id.* at 8).

With regard to pricing, Mr. Noorani argues that SBC Ohio has not provided PUCO approved TELRIC-based rates for use in AT&T's interconnection agreement (*Id.*). Instead, according to Mr. Noorani, SBC Ohio insists that AT&T purchase collocation out of its generic pricing schedule, despite the fact that this schedule has not been reviewed or approved by the PUCO (*Id.* at 8-10). Furthermore, Mr. Noorani claims that SBC Ohio's non-TELRIC based pricing proposals for collocation have been rejected by the Indiana Utility Regulatory Commission (*Id.* at 10). Mr. Noorani also argues that, until the collocation pricing issues have been fully resolved by the PUCO in 96-922, it is not reasonable to determine whether SBC Ohio is in compliance with its checklist obligations regarding collocation (*Id.* at 12). Finally, Mr. Noorani explains that AT&T has experienced inaccurate and inappropriate billing of certain collocation charges, including central office build out (COBO) (*Id.* at 12, 13).

In addition, AT&T submitted the testimony of James Henson in support of AT&T's claims that SBC Ohio has not priced interconnection elements in accordance with the 1996 Act (Henson Initial Affidavit of September 20, 20001, at 4, 5). Mr. Henson represents that the PUCO has not completed its review of SBC Ohio's TELRIC studies for the permanent pricing of certain interconnection elements. AT&T further claims that without approved TELRIC studies, the PUCO cannot

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25 CC Docket 98-147, Fourth Report and Order, Released August 8, 2001.

measure SBC Ohio's compliance with the relevant PUCO orders and the pertinent terms and conditions associated with SBC Ohio's TELRICs (*Id.* at 8-10).

With regard to the quantities of interconnection trunks and collocation, AT&T presented the testimony of Steven Turner. As discussed *supra*, Mr. Turner argues that SBC Ohio's statistics, presented by SBC Ohio witness Heritage, overstates the competitive threat of CLECs in Ohio (Turner Initial Affidavit at 6). In contrast to Ms. Heritage's testimony, Mr. Turner claims that the CLEC traffic traversing interconnection trunks, "demonstrates both the extremely limited size and scope of competition in Ohio" (*Id.* at 5, 6). Mr. Turner points out that compared to the large number of SBC Ohio trunks and the high number of minutes of use on those trunks, CLEC traffic actually represents only seven percent of the entire local usage in Ohio (*Id.* at 7, 8). Furthermore, AT&T posits that the removal of local traffic data of CLECs' customers who are terminators of traffic, such as ISPs, results in a level of facilities-based local competition in Ohio of 2.5 percent (*Id.* at 9, 10). Mr. Turner also takes issue with SBC Ohio's proposed ratio of 2.75 access lines per trunk. AT&T references that the Department of Justice has previously recognized that SBC 's use of the 2.75 ratio overestimates the actual level of competition (*Id.* at 16-17).[26]

2. Sprint's Initial Comments/Affidavits

Sprint argues that SBC Ohio has failed to meet its burden to demonstrate that its physical and virtual collocation arrangements are available on a just, reasonable

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26 Citing to the comments of United States Department of Justice at footnote 15, *Application of SBC Cmmunications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. dba Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-65.

and nondiscriminatory basis in accordance with the 1996 Act and the FCC's rules (Sprint's Initial Comments of September 20, 2001, at 3). Sprint claims that SBC Ohio has failed to provide accurate procedural, technical and statistical information regarding the specific SBC Ohio central offices where Sprint desires to collocate equipment. According to Sprint, SBC Ohio has denied Sprint space that is available in central offices by reserving excess space for its own use (*Id.* at 3, 4). Furthermore, Sprint claims that SBC Ohio has assessed extraordinary charges for collocation without sufficient explanation (*Id.* at 4, 5). Sprint also states that it has experienced difficulty with SBC Ohio's requirements that third-party vendors perform routing verification and trouble shooting functions outside of the Sprint collocation cage, rather than Sprint performing these functions itself (*Id.* at 5, 6).

Next, Sprint objects to the SBC Ohio requirement that Sprint submit an "NXX verification worksheet" in order to set up trunk groups in order to route traffic (*Id.* at 7). According to Sprint, the local exchange routing guide (LERG) is widely used and already contains all of the data on SBC Ohio's NXX verification worksheet that is needed to route calls. Thus, Sprint posits that SBC Ohio's worksheet is unnecessary and results in the potential for error (*Id.*).

In addition, Sprint argues that SBC Ohio has improperly required it to order choke trunks for one-way originating traffic (*Id.* at 8). Sprint claims that it ordered one-way interconnection trunks because of its expected traffic patterns, but SBC Ohio denied this request and, instead, insisted that Sprint order two-way trunk groups, including a choke trunk. Choke trunks are designed to provide additional facilities in order to prevent an interconnecting carrier from flooding the ILEC network with calls originating from the CLECs customers during a mass calling event. Sprint argues that it is unnecessary and costly to order two-way trunk groups for one-way traffic and to include a choke trunk (*Id.* at 9). Furthermore, Sprint states that SBC Ohio improperly denies CLECs the ability to place combination orders for facilities and trunks (*Id.*). Sprint believes that SBC Ohio requires separate orders because SBC Ohio maintains separate access centers and local service centers (LSC). According to Sprint, SBC Ohio's process causes unnecessary additional delay as to when the orders are provisioned compared to time frames associated with ordering such services concurrently (*Id.* at 9, 10).

3. WorldCom's Initial Comments/Affidavits

WorldCom claims that there are unresolved issues with regard to collocation and trunking that WorldCom has raised in its petition for arbitration with SBC Ohio (WorldCom Initial Comments at 8 -10). Specifically WorldCom argues that the PUCO "must first resolve the issues in Case No. 01-1319-TP-ARB (01-1319), *In the Matter of the Petition of MCImetro Access Transmission Services, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Ohio*, before giving any consideration to checklist compliance" (*Id.* at 8). With respect to trunking issues, WorldCom states that its arbitration will address fiber meet technology and interconnection, inter/intraLATA toll trunking issues, and the appropriate trunk design blocking measures (*Id.*). Furthermore, WorldCom states that it has experienced substantial trunk ordering and installation delays in Michigan (*Id.*). With respect to collocation issues, WorldCom argues that compliance with the FCC collocation rules is under consideration in the PUCO's TELRIC docket (*Id.* at 10, 11).

4. CoreComm's Initial Comments/Affidavits

CoreComm argues that SBC Ohio has not met Checklist Item 1 with respect to establishing collocation charges based on TELRIC principles (CoreComm Initial Comments of September 20, 2001, at 11, 12). CoreComm points out that many of the collocation rates are interim and have not been approved by the PUCO. Further, CoreComm claims that the charges assessed by SBC Ohio for collocation power consumption are not only above cost, but are for power the CLEC does not consume (*Id.*). According to CoreComm, its dispute with SBC Ohio regarding charges for collocation power, among other issues, was filed in 01-1528-TP-CSS, *In the Matter of*

the Complaint of CoreComm Newco, Inc. Against Ameritech Ohio for Unlawfully Terminating Service, June 27, 2001; and 01-1721-TP-CSS, *In the Matter of the Complaint of Ameritech Ohio v. CoreComm Newco, Inc. Relative to the Alleged Unjust and Unlawful Violation of the Interconnection Agreement Between the Two Parties*, July 5, 2001.

5. TDS' Initial Comments/Affidavits

TDS filed an affidavit supporting its position regarding the difficulties in obtaining an interconnection agreement with SBC Ohio. According to Mr. Shane Kaatz, TDS has experienced problems in attempting to "opt-in" to an existing interconnection agreement between SBC Ohio and Pathnet (Kaatz Initial Affidavit of September 20, 2001, at 2). Mr. Kaatz recounts the difficulty that TDS encountered when it presented SBC Ohio with a request to adopt the Pathnet interconnection agreement pursuant to Section 252(i) of the 1996 Act. According to Mr. Kaatz, SBC Ohio indicated that it was amending the reciprocal compensation terms of the Pathnet agreement and would offer the agreement with interim pricing. As of the date of his affidavit, Mr. Kaatz contends that SBC Ohio had not yet complied with TDS' request (*Id.* at 3).

6. Time Warner's Initial Comments/Affidavits

Time Warner represents that SBC Ohio has not yet met Checklist Item 1. This conclusion is premised on Time Warner's experiences in negotiating a successor interconnection agreement with SBC Ohio (Sherwood Initial Affidavit of September 20, 2001, at 2, 3). According to Time Warner, the difficulties stem from a turnover in SBC personnel assigned to the Time Warner/SBC Ohio negotiating team. Finally, Ms. Sherwood points out that it is difficult for CLECs like Time Warner to have

meaningful bargaining power in negotiation sessions, including efforts to obtain arbitrated provisions from other agreements with SBC Ohio's consent (*Id.*).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

On May 6, 2002, SBC Ohio filed the revised reply affidavit of Mr. Alexander, which was originally filed on October 22, 2001. In the revised reply affidavit, Mr. Alexander responds to the claims of AT&T, Sprint and WorldCom in regard to the terms and conditions of collocation. Mr. Alexander claims that AT&T is incorrect when it argues that SBC Ohio is ignoring the August 8, 2001, order of the FCC regarding mixed-use equipment. Mr. Alexander states that the FCC order was released one day prior to the filing of his initial affidavit and, therefore, it was not possible to include the requirements of the new order in his initial affidavit (Alexander Reply Affidavit of May 6, at 4, 5). Mr. Alexander notes that SBC Ohio is complying with the FCC order and issued an accessible letter consistent with the FCC's order on September 19, 2001 (*Id.*). In addition, Mr. Alexander states that the discussions with AT&T concerning this issue are ongoing as a result of the AT&T/SBC Ohio arbitration proceeding in Case No. 00-1188-TP-ARB (00-1188), *In the Matter of AT&T Communications of Ohio, Inc.'s and TCG of Ohio's Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Ameritech Ohio*. SBC Ohio believes that appropriate resolution of the issue is in the AT&T/Ameritech Ohio arbitration case (*Id.*).

Mr. Alexander also responds to AT&T's claims with regard to COBO charges for cageless collocation. According to Mr. Alexander, SBC Ohio appropriately

assessed COBO charges to AT&T for cageless collocation because SBC Ohio must prepare its offices for access by multiple collocators whether or not that collocator utilizes caged or cageless collocation (*Id.* at 5). Mr. Alexander points out that the main difference between caged and cageless is that for cageless collocation the collocator can purchase space in a single rack or bay and an enclosure is not erected between the CLECs' collocation equipment. SBC Ohio must still provide the collocator with access to its equipment as it does in a caged environment, and, therefore, the need for the same COBO charges exist. Mr. Alexander further explains that it is possible that AT&T, through its TCG affiliate, may have paid non-TELRIC charges associated with collocation for several collocation sites that were established by TCG prior to the PUCO's TELRIC order of November 22, 1999 (*Id.* at 6). Mr. Alexander states that SBC Ohio is working cooperatively with AT&T to convert the rates for these collocation arrangements to TELRIC-based rates (*Id.*).

Next, Mr. Alexander addresses CoreComm's collocation power allegations. Mr. Alexander points out that the power charges challenged by CoreComm have been approved by the PUCO in its TELRIC order of November 22, 1999, in 96-922 (*Id.* at 7). According to Mr. Alexander, the PUCO approved SBC Ohio's collocation power charges on a per fuse amp basis and not on an "as used" basis. Furthermore, Mr. Alexander states that even though the PUCO has previously addressed this issue, CoreComm has raised it in its complaint case, 01-1721, and other CLECs have raised the same issue in subsequent filings in 96-922 (*Id.*). Therefore, Mr. Alexander argues that it would be inappropriate for the PUCO to address CoreComm's issue in the context of this case. Finally, Mr. Alexander explains that SBC Ohio's methods for establishing the size and capacity for power feeds to collocators is nondiscriminatory

and follows the same engineering and safety principles that SBC Ohio uses to provide power to its own equipment (*Id.*).

SBC Alexander claims that Sprint's complaints regarding SBC Ohio's provision of physical collocation are "unsupported by any specifics and are unfounded (*Id.* at 8). According to Mr. Alexander, it is not clear whether Sprint's experiences are Ohio-specific, since only one central office in Ohio is closed to physical collocation (*Id.*). Mr. Alexander notes that although Sprint, as a CLEC, is entitled to tour a closed central office when physical collocation is denied, the company has never made such a request in Ohio (*Id.*). Mr. Alexander also argues that the charges for collocation that Sprint regards as extraordinary were, at the time of its comments, over a year old and Sprint did not previously dispute the charges at the time they were assessed. SBC Ohio also points out that the charges in question pertain to collocation space preparation and that Sprint would only be required to pay a pro rata percentage of the collocation space preparation charge. Finally, Mr. Alexander notes that Sprint's difficulty with vendor approval is an unsubstantiated anecdotal experience that may have resulted from lack of communication (*Id.* at 9).

SBC Ohio also addresses Sprint's complaint that it was denied access by SBC Ohio to areas outside of Sprint's cage to perform routine cable verification and troubleshooting functions. SBC Ohio Deere asserts that Sprint makes no legal showing that it is entitled to such access (Deere Reply Affidavit of October 22, 2001, at 4). Mr. Deere contends that the FCC has previously determined that CLECs were not entitled to unlimited access to a central office.[27] Further, SBC Ohio points out

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27 FCC 01-204, ¶¶ 59-61.

that Sprint signed an interconnection agreement which provides for third-party vendors to perform routine cable verification and troubleshooting functions (*Id.*). Similar to Mr. Alexander, Mr. Deere argues that Sprint's complaints lack specificity and these complaints have not been elevated through the appropriate channels (*Id.* at 5).

SBC Ohio responds to Sprint's claims that the NXX verification worksheet is unnecessary by pointing out that there is no LERG standard that prohibits the use of additional forms to ensure the proper routing of calls (*Id.*). Mr. Deere posits that SBC Ohio's form is important because the LERG does not always reflect the appropriate routing of a call especially where a carrier has established a virtual point of interconnection (*Id.*). Mr. Deere further argues that Sprint's arguments regarding two-way trunks and choke trunks are contract disputes with SBC Ohio, which SBC Ohio has offered to further discuss with Sprint (*Id.* at 7).

SBC Ohio responds to the CLECs' comments regarding the quantities of collocation and interconnection. SBC Ohio Heritage provides updated data regarding interconnection trunks provided to CLECs. According to Ms. Heritage, the total number of interconnection trunks utilized by CLECs had increased from 219,916, at the end of June 2001, to 229,838 at the end of August 2001 (Heritage Reply Affidavit at 9). Ms. Heritage refutes AT&T's analysis that the ratio of 2.75 access lines per trunks is unreasonable because of the large quantity of ISP traffic that the CLECs terminate. According to Ms. Heritage, the 2.75 factor was specifically chosen "in order to account for the fact that CLEC networks may not yet be engineered with a high level of efficiency, and that CLECs may target customers, such as ISPs, that require a high number of interconnection trunks (*Id.* 21, 22). Ms. Heritage points out

that utilizing a 2.75 factor, the estimated number of facilities based business and residential CLEC access lines in Ohio as of August 2001 is 632,055 lines (*Id.*).

2. Consumer Entities' Reply Comments/Affidavits

According to Consumer Entities, the comments of the CLECs demonstrate why SBC Ohio has failed to comply with Checklist Item 1 (Consumer Entities' Reply Comments at 9). Consumer Entities believe it is significant that the CLECs' concerns regarding collocation are "extensive and virtually unanimous" (*Id.* at 10). Furthermore, Consumer Entities reference AT&T's, CoreComm's and Sprint's arguments regarding problems with collocation pricing. Consumer Entities posit that these arguments prove that SBC Ohio's intention is to impose unnecessary additional costs on CLECs (*Id.* at 11). Consumer Entities also point to WorldCom's, AT&T's and Sprint's comments as evidence that SBC Ohio has not only imposed unreasonable pricing, but also unreasonable terms and conditions on collocation and interconnection in general. Consumer Entities assert, that SBC Ohio's intention is to frustrate competition. Therefore, Consumer Entities do not believe that SBC Ohio has met the requirements of Checklist Item 1 (*Id.* at 12).

D. PUCO's Discussion

Section 271(c)(2)(B)(i) of the 1996 Act requires BOCs to demonstrate compliance with what is commonly known as Checklist Item 1, interconnection. This section requires that interconnection be provided by SBC Ohio in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the 1996 Act. Section 251(c)(2) defines interconnection as "The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange

carriers network . . . for the transmission and routing of telephone exchange service and exchange access; . . . at any technically feasible point within the carrier's network; . . . that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; . . . on rates that are reasonable, nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section [section 251] and section 252."

The PUCO's local service guidelines in Case No. 95-845-TP-COI, require that interconnection be provided consistent with the 1996 Act and the FCC's rules in 47 C.F.R. 51.30529.[28] The two common methods for obtaining interconnection include the provisioning of interconnection trunking by the incumbent local exchange company (ILEC) and the establishment of collocation at the premises of the ILEC. The affidavits of SBC Ohio's Mr. Deere and Mr. Alexander, as summarized herein, fully describe the options available to CLECs for obtaining interconnection trunking and collocation. These options are consistent with both the FCC rules and PUCO's guidelines. No entity appears to dispute that SBC Ohio is providing interconnection facilities "for the transmission and routing of telephone exchange service or exchange access; . . . at any technically feasible point within the carrier's network." Further, no entity appears to substantively challenge that the interconnection provided by SBC Ohio is "at least equal in quality to that which is provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." The objection raised by several of the commentors centers

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28 PUCO's local service guidelines, Case No. 95-845-TP-COI (95-845), *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, February 20, 1997, III.B.2.

on the issues of the rates, terms, and conditions associated with the provision of Checklist Item 1 by SBC Ohio in certain circumstances.

Although much of the concerns regarding the terms and conditions of Checklist Item 1 have been resolved by the PUCO or are currently being addressed in a pending docket, the PUCO will respond to the issues raised by the CLECs and the Consumer Entities. AT&T raises concerns over the placement of mixed-use equipment in its collocation at SBC Ohio premises. It was unclear, at the time that AT&T filed its initial affidavit of Mr. Noorani, as to whether SBC Ohio intended to comply with the FCC's August 2001 Order in CC Docket 98-147. This order required that SBC Ohio allow the placement of mixed-use equipment as long as the primary function of the equipment is necessary for interconnection and access to UNEs. While SBC Ohio's intentions may not have been clear at the time Mr. Noorani filed his affidavit in September 2001, it appears that this issue has since been resolved. On March 31, 2003, SBC Ohio and AT&T jointly filed an executed interconnection agreement. This agreement was approved by the PUCO on April 24, 2003. This agreement contains agreed-upon language that allows AT&T to collocate mixed-used equipment consistent with the aforementioned FCC order. The proposed language appears to have addressed AT&T's concern by allowing for the placement of such equipment. Furthermore, the PUCO's March 13, 2003, Opinion and Order (*March 13th Opinion and Order*) in 96-922 affirms the requirement for placement of multi-use equipment "as long as it meets the 'necessary' requirement of 47 C.F.R. 51.322(b) of the FCC rules."[29]

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29 *March 13th Opinion and Order*, at 31.

Turning to AT&T's, WorldCom's and CoreComm's criticisms of SBC Ohio's lack of permanent TELRIC rates for certain collocation elements, the PUCO acknowledges that at the time SBC Ohio filed its affidavits, this may have been a legitimate concern. Since that time, the PUCO has made significant progress with addressing this issue. In fact, as previously mentioned, the PUCO's *March 13th Opinion and Order* set forth permanent pricing and associated terms and conditions for certain collocation elements including shared caged and cageless collocation. For example, AT&T claims that SBC Ohio inappropriately assessed a central office build-out charge for cageless collocation. The PUCO's *March 13th Opinion and Order* allows SBC Ohio to recover the TELRIC charges associated with COBO for cageless collocation. The PUCO will more fully explore the permanent TELRIC pricing in our discussion of Checklist Item 2 *infra*. In sum, the arguments set forth by the commentors regarding interim TELRIC pricing and associated terms and conditions for collocation are no longer applicable and should not be considered when evaluating SBC Ohio's compliance with Checklist Item 1.

With regard to CoreComm's specific pricing issue regarding power consumption, the PUCO again points to it *March 13th Opinion and Order*. In that order, the PUCO reaffirmed its previous decision to establish two rate elements for power including a nonrecurring charge for "power delivery-per power lead and a recurring charge for "power consumption-per fuse amp." Thus, SBC Ohio's charges for power consumption are TELRIC-based and apply not only to physical caged and virtual collocation but also to cageless collocation and shared cage collocation. As to CoreComm's claim that SBC Ohio is allegedly charging CoreComm for power it does not consume, CoreComm correctly notes that this issue is currently pending before

the PUCO and is appropriately filed in the context of an interconnection dispute between CoreComm and SBC Ohio in 01-1528 and 01-1721.

Turning to Sprint's concerns, the PUCO notes that Sprint's complaints regarding SBC Ohio's failure to provide accurate procedural, technical, and statistical information about SBC Ohio's central offices where Sprint desires to collocate is vague and lacking in specificity. Similarly, the Commission believes that Sprint's arguments regarding the assessment of extraordinary collocation charges and third-party vendor approval are vague and lack specificity. As SBC Ohio pointed out in its comments, only one Ohio central office at that time, was closed to physical collocation. Furthermore, SBC Ohio argues that none of the other issues were formally disputed or escalated within the SBC Ohio organization. As Sprint is aware, it may file a formal complaint or pursue informal resolution of intercarrier concerns between itself and SBC Ohio. To date, the PUCO is not aware of any specific complaints by Sprint regarding SBC Ohio's placement of Sprint equipment in its central offices, extraordinary charges for collocation, or other issues.

Furthermore, the PUCO does not agree with Sprint's objections to the requirement to provide SBC Ohio with an NXX verification worksheet in order to set up trunk groups to route traffic. Sprint would rather that SBC Ohio rely on information currently contained within the LERG. Since the LERG is only a reflection of which rate center a carrier has been assigned numbering resources by the North American Numbering Administrator (NANPA), and not always an accurate representation of where a call will be routed, the PUCO supports the requirement of SBC Ohio that a CLEC verify the routing of trunk groups.

Turning to Sprint's claims that SBC Ohio improperly required Sprint to order two-way trunk groups including a choke trunk for one-way originating traffic, the PUCO agrees with SBC Ohio that this dispute is a contract interpretation issue. The interconnection agreement between Sprint and SBC Ohio governs the networking configurations employed by each party. The companies agreed to the network engineering principles and network requirements at the time they signed their interconnection agreement. Sprint, therefore, is free to pursue appropriate resolution through the terms of its interconnection agreement and either formal or informal dispute resolution with the PUCO. The PUCO notes that Mr. Deere of SBC Ohio indicated SBC Ohio's willingness to further discuss this issue.

The final arguments raised by Sprint relate to the ordering process for combination orders that include both local and access services. Sprint believes that it causes additional delays for Sprint to send these orders to separate service centers. As this issue relates to the ordering of service, the PUCO will consider the ordering and provisioning of service through SBC Ohio's OSS process in a subsequent section of this report.

Turning to the issues set forth by WorldCom, the PUCO notes that the main objection of WorldCom to SBC Ohio's compliance with Checklist Item 1 was the pending resolution of its arbitration case with SBC Ohio. WorldCom pointed to the trunking and collocation issues raised in its arbitration case as a prerequisite to judging SBC Ohio's compliance with this checklist item. Since the time that WorldCom filed its comments, the PUCO has issued an arbitration award in 01-1319 and the parties jointly filed an executed interconnection agreement, which was approved by the PUCO on February 13, 2003. Thus, the issues raised by WorldCom

have been resolved, as reflected in the effective interconnection agreement between the parties.

With respect to the issues raised by TDS and Time Warner as to the difficulties in obtaining interconnection agreements with SBC Ohio, the PUCO recognizes the difficulties these companies may have experienced with changes in personnel by SBC Ohio. According to the reply affidavit of SBC Ohio's Mary Pat Regan filed on October 22, 2001, SBC Ohio has taken steps to train and certify SBC Ohio account managers (Regan Reply Affidavit of October 22, 2001, at 4). Furthermore, SBC Ohio has implemented a policy of informing its wholesale customers when changes in the account management teams are inevitable and working with those customers to ensure a more orderly transition (*Id.* at 5). The PUCO would also point out that Time Warner has, since the time of the filing of its affidavit, entered into a new interconnection agreement with SBC Ohio. The agreement was filed in Case No. 02-911-TP-NAG, *In the Matter of the Application of Ameritech Ohio for Approval of an Agreement*, and was automatically approved by the PUCO on July 17, 2002. Additionally, TDS and SBC Ohio jointly filed an interconnection agreement on May 1, 2003, in Case No. 02-1254-TP-ARB, *In the Matter of the Petition of TDS MetroCom, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements With SBC Ohio*.

With respect to the issue of quantities of interconnection trunks and collocation, the PUCO notes that this issue, too, has improved since the third quarter of 2001. According to Ms. Heritage's reply affidavit, the number of interconnection trunks utilized by CLECs was 229, 838. According to the fourth quarter 2002 merger commitment report submitted to the PUCO by SBC Ohio in 98-1082, this number has

increased to 294,366. Other areas of this report more fully discuss competitive growth measures and their results. Based on this report, the PUCO is satisfied that SBC Ohio continues to experience a positive trend towards increased purchasing by CLECs of interconnection trunks and collocation space in Ohio.

It appears that the Consumer Entities, in their reply comments, simply reiterate the claims of the CLECs as previously addressed herein. Further, the PUCO rejects Consumer Entities' statement that the CLECs' concerns with collocation are "extensive and virtually unanimous." As seen from the previous discussion, much of the CLECs' collocation concerns are dated, anecdotal, and have been resolved since the time of the filing of affidavits in this case.

As discussed, herein, the PUCO has examined the claims of the CLECs and the Consumer Entities and believes that they are without merit. Based on the record in this proceeding, it appears as though SBC Ohio offers all forms of interconnection, including all forms of trunking and collocation required by the 1996 Act, and the relevant FCC and PUCO orders.

As all of the interested entities are aware, the PUCO and its staff have been involved since the very first local service interconnection agreement in Ohio resolving disputes regarding interconnection. The PUCO has promulgated rules, and issued numerous arbitration awards and rehearing orders regarding these issues. Furthermore, the PUCO and its staff have spent numerous hours reviewing SBC Ohio's TELRIC cost studies and issuing orders setting permanent SBC Ohio TELRIC interconnection rates. At each stage of these proceedings, the PUCO has allowed for the CLECs' and, where appropriate, Consumer Entities' participation.

Through our orders, the PUCO has set forth the interconnection standards and associated terms and conditions for SBC Ohio. Specifically, the PUCO has insured that the trunking, collocation, and other forms of interconnection are provided by SBC Ohio in accordance with the aforementioned conditions and consistent with the 1996 Act. Furthermore, the PUCO has instituted mechanisms, both formal and informal, where carriers can resolve interconnection implementation dispute issues like many of those set forth in the CLECs' affidavits. The PUCO certainly foresees the continuation of these initiatives irrespective of SBC Ohio's 271 filing with the FCC.

E. PUCO Recommendation

Based on the above discussion, the PUCO recommends that the FCC find that SBC Ohio has demonstrated compliance with Checklist Item 1 by providing interconnection in accordance with Section 271 of the 1996 Act.

IV. CHECKLIST ITEM 2 - ACCESS TO UNES

Checklist Item 2 requires that a Section 271 applicant demonstrate that it offers "[n]ondiscrminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 253(d)(1)" (47 U.S.C. § 271[c][2][B][ii]).

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) General Access to UNEs

SBC Ohio opines that it satisfies Checklist Item 2 by providing "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory" through its approved interconnection agreements and tariffs. SBC Ohio contends that its approved interconnection agreements provide access to a comprehensive set of UNEs under terms, and conditions that comply with Sections 251 and 252 of the 1996 Act (Alexander's Initial Affidavit at 23). In many instances throughout SBC Ohio's Alexander's initial affidavit, the SBC Ohio/TOTALink of Ohio interconnection agreement[30] was referenced as an example of provisions complying with the 1996 Act.

In addition, SBC Ohio represents that, pursuant to Section 252(i) of the 1996 Act, a requesting CLEC may obtain the terms and conditions of an entire currently approved and effective interconnection agreement between SBC Ohio and any other CLEC. This option is often referred to as the "most favored nation" ("MFN") option. Further, SBC Ohio represents that a CLEC may opt into a provision (i.e., appendix/article) for any interconnection, service or network element provided under a PUCO-approved and effective agreement upon the same terms and

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30 *In the Matter of the Joint Application for Approval of an Agreement Between Ameritech Ohio and TOTALink of Ohio, LLC Pursuant to Section 252 of the Telecommunications Act of 1996*, Case No. 01-251-TP-NAG (01-251).

conditions as those provided in the agreement under which those selected provisions are taken, including all legitimately related terms and conditions. This option is often referred to as the "pick and choose" option (*Id.* at 9).

SBC Ohio states that it provides CLECs with access to all the features, functions, and capabilities of the network elements in a manner that allows the CLEC to offer any telecommunications service that the network element is capable of providing pursuant to 47 C.F.R. 51.307(a), (c) (Deere Initial Affidavit at 24). SBC Ohio permits a CLEC to purchase UNEs in order to provide exchange access service to itself for the purpose of provisioning interstate and intrastate, interexchange services to its customers, subject to the applicable charges pursuant to 47 C.F.R. 51.309(b) (*Id*.). Requesting CLECs are entitled to exclusive use of an unbundled network facility, and to the use of its features, functions, or capabilities, for a set period of time pursuant to 47 C.F.R. 51.309(c). However, SBC Ohio retains ownership of the facility and retains the obligation to maintain, repair or replace UNEs as necessary. SBC Ohio represents that each network element that it provides meets applicable regulatory performance standards and is at least equal in quality and performance to that which SBC Ohio provides to itself pursuant to 47 C.F.R. 51.311(a), (b) (*Id*.).

SBC Ohio also states that it has legally binding terms and conditions, through its interconnection agreements to offer access on an unbundled basis to network elements in compliance with the FCC's *UNE Remand Order* (Alexander Initial

Affidavit at 24).[31] Attachment A to Mr. Alexander's August 9, 2001, affidavit provides a summary of SBC Ohio's approved agreements containing offerings related to Checklist Item 2. In addition, SBC Ohio states, the generic interconnection agreement (GIA)[32] is maintained and updated to incorporate all of the FCC's UNE remand requirements for CLECs to use in negotiating interconnection agreements (Alexander Initial Affidavit at 25).

SBC Ohio states that it meets its obligation to offer all UNEs required by the FCC and continues to offer those elements that are no longer considered UNEs but which exist in current contracts. Specifically, SBC Ohio represents that it provides access to the following UNEs:

(1) Local loop (including sub-loops, the high frequency portion of the loop (HFPL), dark fiber and loop qualification data).

(2) Network interface device (NID).

(3) Local switching capability.

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31 *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC rcd. 3696 (rel. November 1999) ("*UNE Remand Order*").

32 The multi-state generic interconnection/resale agreement (GIA) can be found at https://clec.sbc.com/unrestr/interconnect/multi/index.cfm. The GIA is a comprehensive contractual offering that contains terms and conditions for the collocation, interconnection, UNE, reciprocal compensation, resale and related wholesale products required by the FCC. In

(4) Tandem switching capability.

(5) Packet switching capability (if conditions required by the FCC are met.

(6) Interoffice transmission facilities (including dark fiber).

(7) Signaling networks and call related databases (including, but not limited to, the line information database ("LIDB"), toll free calling database, number portability database, calling name ("CNAM") database, operator services/directory assistance (OS/DA) databases, advanced intelligent network ("AIN") databases, and the AIN platform and architecture).

(8) OSS functions.

(Deere Initial Affidavit at 4, 5).

SBC Ohio provides UNEs, or modifications to previously identified network elements, to the extent technically feasible and consistent with the 1996 Act's requirements utilizing a process called network element bona fide request (BFR)

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addition, the GIA can be and is used by CLECs as the basis for interconnection agreement

process. A network element BFR is to be submitted by the CLEC in writing and should include a technical description of each requested network element, the date when interconnection is requested, and the projected quantity of interconnection points ordered with a demand forecast. Within ten business days of its receipt SBC Ohio will acknowledge receipt of the BFR and in such acknowledgement advise the CLEC of the need for any additional information needed to process the request. Except under extraordinary circumstances, within thirty calendar days of its receipt of a complete and accurate BFR, SBC Ohio will provide a preliminary analysis confirming that SBC Ohio will offer access to the network element or explain in detail that access to the element is not technically feasible and/or that the request does not qualify as a network element that is required to be provided under the 1996 Act. If SBC Ohio confirms that it will make the network element available, and the CLEC authorizes further development, SBC Ohio will negotiate a schedule for arriving at a price and implementation terms (which generally will not extend beyond 90 days from SBC Ohio's receipt of the request). At a minimum, SBC Ohio's network element BFR quote will include (1) the first date of availability, (2) installation intervals, (3) applicable rates (recurring, nonrecurring and other), (4) BFR development and processing costs, and (5) terms and conditions by which the request shall be made available. SBC Ohio states that in the AT&T/SBC Ohio award,[33] the PUCO stated that "the time frames recommended in the panel report, 30 days from authorization to proceed to respond to standard request (a total of 60 days from receipt of a BFR), and 60 days for nonstandard (a total of 90 days from receipt of a BFR), represents a middle ground of the parties positions and an appropriate resolution to this issue" (Deere Initial Affidavit at 28-29).

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negotiations with SBC Ohio.

(b) Description of Access to Specific UNEs

SBC Ohio states that majority of the UNEs required pursuant to the FCC's rules are separately addressed by the Section 271 checklist and, therefore, are discussed in its respective sections of the checklist discussion. Access to the NID is discussed below.

NID is defined as any means of interconnection of end-user customer premises wiring to SBC Ohio's distribution loop facilities, such as a cross-connect device used for that purpose. The NID contains the appropriate and accessible connection points or posts to which the service provider and the end-user customer each make their connections (Deere Initial Affidavit at 26) When a CLEC provides its own loop facilities, the CLEC provides its own NID and interfaces to the customer's premise wiring through connections in the customer chamber of the SBC Ohio NID pursuant to 47 C.F.R. 51.319(b). CLECs may connect to the customer's inside wire at the SBC Ohio NID, as is, at no charge. Any repair, upgrades, disconnects, or rearrangements required by the CLEC are performed by SBC Ohio based on time and material charges. When a CLEC obtains local loops as a UNE from SBC Ameritech, SBC Ohio also provides the NID. SBC Ohio connects the drop wire between the distribution plant facilities and the NID at no additional charge to the CLEC. At multiple dwelling units or multiple-unit business premises, the CLEC may provide its own NID, and connect directly with the end user's premises wire, or the CLEC may connect with the end user's premises wire via SBC Ohio's NID where necessary (*Id.*).

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33 00-1188, Arbitration Award, released June 21, 2001, at 5.

SBC Ohio states that as a result of discussions with the CLECs in collaborative[34] and in the SBC Ohio CLEC user forum, SBC Ohio has agreed to procedures for moving internal NIDs outdoors. Accordingly, SBC Ohio will move an internal "protector" or "station block" (which are defined as a grandfathered demarcation point that contains a nonjacked end RJ11 or RJ21 type device) to an external location with a RJ-type device at no charge to the CLEC. SBC Ohio will perform such work, if it makes a customer premise visit for any reason (other than a CLEC work order discussed below), unless the customer specifically requests that protector, or station block not be moved. SBC Ohio will move a working internal NID to an external location at SBC Ohio's existing time and material charges on a nondiscriminatory basis for retail and wholesale customers if the CLEC places an order for such work. SBC Ohio agreed to waive such charges for CLEC-requested NID moves through July 31, 2001[35] (*Id.*)

(c) UNE Combinations (including UNE-P[37])

SBC Ohio states that it provides access to UNEs in order to permit CLECs to combine such network elements with other network elements obtained from SBC Ohio (or with network components provided by the CLEC itself provided that such a

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34 The collaborative resulted from issues raised in Wisconsin in Docket 6720-T1-160. The agreements from this process were adopted in Ohio pursuant to 00-942.

35 Third Joint Progress Report Regarding The Resolution of Certain OSS, Process, Product and Performance Measurement Issues and Request for a Procedural Entry on the Remaining Disputed Issues, filed January 16, 2001.

37 UNE-P is generally referred to as a combination of an unbundled local loop with unbundled local switching with shared transport (ULS-ST)

combination is technically feasible and would not impair the ability of other carriers to obtain access to other UNEs or to interconnect with SBC Ohio's network) (*Id.* at 24).

According to SBC Ohio, the FCC recognized, when it promulgated its UNE combination rules in 47 C.F.R. 51.315, that combinations of network elements fall into two general categories: 1) network elements that are currently physically combined in SBC Ohio's network at the time of the CLEC's request; and 2) network elements that are not currently physically combined in SBC Ohio's network at the time of the CLEC's request. As to the first category, consistent with the FCC's rule 47 C.F.R. 51.315(b), SBC Ohio does not separate the specific UNEs requested that are currently physically combined in its network unless requested to do so by the CLEC.[38] Under the initially proposed OH2A agreement amendment, SBC Ohio offered new network element combinations requested by CLECs to provide local service to residential customers, for three years following the PUCO's approval of the Oh2A agreement amendment. Additionally, under the Oh2A agreement amendment, CLECs were allowed to obtain new UNE loop-port combinations, for use in providing service to business customers for two years (Alexander Initial Affidavit at 28-30).

On April 29, 2002, SBC Ohio provided notice to the PUCO and to the CLECs that it was withdrawing its proposed Oh2A agreement amendment. SBC Ohio notes that prior to the withdrawal of Oh2A, neither had any Ohio CLEC had executed an Oh2A agreement, nor had the PUCO approved the Oh2A agreement amendment.

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38 The proposed Oh2A agreement is Attachment B Alexander Affidavit of August 9, 2001.

SBC Ohio references that, on October 4, 2001, the PUCO issued an Opinion and Order ("*October 4th Order*") in 96-922 addressing the scope of SBC Ohio's obligation to offer existing UNE-P combinations. In the *October 4th Order*, the PUCO determined that nonrecurring charge (NRC) of $0.74 should be applied in the case of "simple migrations and to the provision of UNE-P in circumstances where the facilities remain connected through. . . ." The PUCO also noted that the $0.74 charge did not include recovery of any OSS costs, which will be recovered through a separate rate to be determined through a separate TELRIC study to be reviewed and approved by the PUCO.

SBC Ohio recounts the history relative to its efforts to comply with its obligations regarding existing and new UNE combinations. On June 26, 2002, during a collaborative workshop session, the PUCO staff requested that SBC Ohio demonstrate how it complies with the United States Supreme Court's determination[39] that ILECs must offer both existing and new UNE combinations. On July 15, 2002, SBC Ohio supplemented the record through the filing of Mr. Alexander's supplemental affidavit in this docket to demonstrate that SBC Ohio has in place provisions that comply with its obligation to provide existing UNE combinations including UNE-P. Attached to Mr. Alexander's supplemental affidavit filing is the Supplemental Exhibit 1, which is captioned as "Ohio Existing UNE-P Amendment" (Alexander Supplemental Affidavit of July 15, 2002, at 3, 5). According to SBC Ohio, the "Ohio Existing UNE-P Amendment" implements the PUCO's pricing requirements detailed in the *October 4th Order* (*Id.* at 7). On May 13, 2002, SBC Ohio and AT&T executed an amendment to the parties' interconnection

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39 *Verizon Communications Inc. v. FCC*, 535 US , 122 S. Ct. 1646 (2002) (*Verizon* decision).

agreement incorporating the terms and conditions required per the PUCO's *October 4th Order*. SBC Ohio notes that the amendment was approved by the PUCO on June 14, 2002, in Case No. 02-1145-TP-AEC, *In the Matter of the Joint Application for Approval of Agreement Amendments Between Ameritech Ohio and AT&T Communications of Ohio, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996* (*Id.* at 4).

Subsequently, on October 4, 2002, SBC filed the "Sixth Joint Progress Report Regarding Existing UNE-P and New UNE Combinations" (Sixth Joint Progress Report) signed by SBC Ohio and a number of CLECs participating in this proceeding ("6th PR-Joint CLECs"). Attachment A to the Sixth Joint Progress Report is captioned as "Ohio Existing UNE-P and New Combinations Amendment" ("UNE combinations amendment"). The "UNE combinations amendment" includes SBC Ohio's proposed terms and conditions for the offering of existing UNE-P and new UNE combinations, ULS, and the unbundled local switching-shared transport (ULS-ST). Attachment B to the Sixth Joint Progress Report includes the 6th PR-Joint CLECs' red-line version of SBC Ohio's proposed "UNE combinations amendment".

SBC Ohio states that its proposed "UNE combinations amendment" filed with in the Sixth Joint Progress Report fully satisfies SBC Ohio's UNE combination obligations under Section 271, Checklist Item 2, the FCC's UNE combinations rules, including 47 C.F.R. 51.315(c)-(f), as reinstated by the *Verizon* decision, and the PUCO's October 4, 2001, January 31, 2002, and July 11, 2002, orders in 96-922 (SBC Ohio Comments of October 11, 2002, in Support of Existing UNE-P and New Combinations Amendment at 1). SBC Ohio also states that it meets each of its obligations to: provide UNEs in a manner that allows a CLEC to combine the UNEs itself; to not separate UNEs that are currently physically combined unless requested

to do so by the CLEC; and in some circumstances, to provide new combinations involving UNEs to CLECs. In addition, SBC Ohio represents that it complies with 47 C.F.R. 51.315(a) by providing access to UNEs in a manner that enables CLECs to combine them through physical collocation arrangements - including caged, shared-caged, cageless physical collocation, and adjacent structure collocation (*Id.*).

With regard to the UNEs that are not currently physically combined in SBC Ohio's network, the company represents that it offers binding terms and conditions for the purpose of provisioning such UNEs as combinations (i.e., new UNE combinations). Specifically, SBC Ohio identifies ten specific new UNE-P combinations and eight specific new EEL combinations offered in the amendment on a standard basis (Alexander Supplemental Affidavit of October 11, 2002, at 4, 8, 9). Additionally, SBC Ohio submits that the "UNE combinations amendment" reflects the PUCO's directive to apply an interim nonrecurring charge of $33.88 to new residential UNE-P requests[40] (*Id.* at 18). Further, SBC Ohio states that the "UNE combinations amendment" provides CLECs with the ability to request other types of UNE combinations not identified as standard combinations, as well as combinations of SBC Ohio's UNEs with a CLEC's own network elements.

The "UNE combinations amendment" also contains a streamlined BFR process under which additional new UNE combinations considered "ordinarily combined" (BFR-OC process) may be requested (*Id.* at 11, 20). The amendment also allows for the regular BFR process to be used to request a combination of UNEs with a network element possessed by the CLEC pursuant to 47 C.F.R. 51.315(d) (*Id.* at 10, 19, 21).

SBC Ohio acknowledges its obligations under 47 C.F.R. 51.315(e)-(f), which relate to the "burden of proof" the ILEC bears if the ILEC denies a CLEC's request for a particular combination involving a UNE. Thus, SBC Ohio believes that it offers access to UNE combinations in full compliance with Section 251(c)(3) of the 1996 Act and the FCC's UNE combination rules.

According to SBC Ohio, the BFR-OC process provides the following advantages and streamlining in comparison to the standard BFR process:

(1) A CLEC may obtain a final quote up to 30 days sooner than under the standard BFR process.

(2) In the event that SBC Ohio does not agree that the requested new combination of UNEs is "ordinarily combined", the CLEC will be notified as such within ten days of receipt of the CLEC's completed BFR-OC request.

(3) The standard fee associated with preparing the BFR preliminary analysis and final quote is waived.

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40 PUCO Entry, July 11, 2002, at 5; and Entry on Rehearing, October 10, 2002, at 5, 96-922 and 00-1368-TP-ATA.

(d) Enhance Extended Loops "EEL" Combinations

SBC Ohio states that it also satisfies the FCC requirement (e.g., FCC's supplemental order[41]), which modifies the FCC's *UNE Remand Order* with respect to the use of UNEs to provide exchange access services. Under the *Supplemental Order*, the FCC ruled that interexchange carriers (IXCs) may not convert special access services to combinations of unbundled loops and transport network elements (also known as enhanced extended loops - "EELs" except when an IXC uses combinations of UNEs to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. SBC Ohio has established processes to accept and provision a CLEC's request to convert an existing special access arrangement to a combination of UNEs in accordance with the FCC's *Supplemental Order* and supplemental order clarification[42] (Alexander Initial Affidavit at 27).

SBC Ohio states that on July 31, 2002, SBC Ohio and CLECs participating in a collaboratives process in this proceeding (5th PR-Joint CLECs), jointly filed the "Fifth Joint Progress Report Regarding the Conversion of Special Access Arrangements to UNE Combinations" (Fifth Joint Progress Report). As "Attachment 1" to the Fifth Joint Progress Report, the parties proposed an interconnection agreement amendment for conversion of a special access arrangement to an EELs combination.

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41 *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 Supplemental Order, 15 FCC Rcd. 1760 (1999) (*Supp;lemental Order*).

42 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Spplemental Order Clarification, 15 FCC Rcd. 9587 (2000) (*Supplemental Order Clarification*).

SBC Ohio believes that Attachment 1 to the Fifth Joint Progress Report is consistent with the determinations and criteria outlined in the FCC's June 2, 2000, *Supplemental Order Clarification*. Further, based on the Fifth Joint Progress Report, all interested entities acknowledge that the FCC is currently reviewing these issues. However, there is disagreement as to whether the determinations or criteria in the FCC's *Supplemental Order Clarification* should be modified. As a result, parties to the Fifth Joint Progress Report agree that: (1) the PUCO has the authority to modify its policy regarding conversion of special access arrangements to UNE combinations in a manner consistent with applicable law; (2) each party reserves the right to withdraw, revise or otherwise modify its agreement of Attachment 1 consistent with future changes to the existing FCC's regulations and/or any other relevant regulatory, judicial or legislative action.

(e) Pricing of UNEs

SBC Ohio states that Section 252(d)(1) of the 1996 Act requires that prices for interconnection and UNEs should be "based upon the cost" of providing these elements, products and services, and that such prices "may include a reasonable profit." SBC Ohio points out that the FCC has decided that the TELRIC is the appropriate methodology for establishing UNE prices, coupled with a reasonable allocation of forward-looking shared and common costs. SBC Ohio notes that Section 252(d)(2) of the 1996 Act requires that the charges for local transport and termination recover the "costs" of transporting and terminating "calls that originate on the network facilities of the other carrier," and that the FCC has specified that these costs are to be determined in the same manner as the costs for network interconnection, UNEs, and collocation. SBC Ohio opines that the costs proposed

satisfy both the requirements of the 1996 Act and the requirements of the FCC's rules (Dr. Currie Initial Affidavit of September 20, 2001, at 4, 11)

SBC Ohio notes that in 96-922, the PUCO has analyzed, among other things, the UNE and collocation rates that SBC Ohio is permitted to charge CLECs pursuant to arbitrated interconnection agreements approved by the PUCO. Several of Ohio CLECs actively participated in this case, including AT&T and MCI WorldCom. SBC Ohio asserts that each UNE rate currently available, as well as the rates currently available for all required forms of collocation and reciprocal compensation, have either been approved or are pending approval by the PUCO. SBC Ohio represents that the compliance cost studies submitted in 96-922 with respect to these issues were found to be in compliance with the PUCO's orders.

SBC Ohio discusses that it submitted, for PUCO approval, cost studies, rate information, and/or terms and conditions for UNE-P, xDSL line sharing, loop conditioning, loop information, permanent shared transport, and shared and cageless collocation. SBC Ohio submits that the proposed rates are based on, and derived from, cost studies that comply with the principles and directives articulated in the PUCO's directives in 96-922, and that, as of the time of its comments, the proposed rates were pending before the PUCO for consideration (SBC Ohio's Initial Brief of August 9, 2001, at 19, 20).

Specifically, SBC Ohio delineated in Attachment C to Dr, Currie's affidavit, the following list the forward-looking cost studies for UNEs, interconnection, collocation, and structure access which were submitted to and approved by the

PUCO, as well as studies that were submitted and were awaiting approval by the PUCO as of the filing of its comments:

(1) TELRIC cost study filings approved by PUCO on June 19, 1997, Opinion and Order in 96-922:

800 access service
Access to LIDB
AIN
Daily usage fee (DUF)
Local switching
Network access line/service coordination fee
Nonrecurring costs for service ordering and line connection
OS/DA
Service provider number portability - direct
Service provider number portability - remote
Signaling System 7 (SS7)
Unbundled loops
Unbundled tandem switching
Interconnection cost studies
SBC Ohio central office interconnection (ACOI) aka physical collection

SBC Ohio virtual optical interconnection (AVOI) aka virtual collocation
Reciprocal compensation
Structure cost studies; and
Pole attachment and conduit occupancy accommodations.

(2) TELRIC cost studies pending PUCO approval as of August 9, 2001:

Custom routing of OS or DA via AIN for ULS-ST
Dial tone testing
Emergency number service access (ENSA)
Line sharing HFPL
Nonelectronic service order processing
Caller ID with name (CNAM)
Sub-loop UNE - nonrecurring
Unbundled local switching (ULS) - shared transport (ST)
Unbundled DS3 loop
Unbundled DS3 sub-loop
UNE - dark fiber nonrecurring
UNE - DS3 nonrecurring
Unbundled sub-loops

UNE - manual loop qualification nonrecurring
UNE nonrecurring (HFPL)
UNE remand dark fiber
xDSL loop conditioning nonrecurring
Interconnection cost studies
Shared cage physical collocation
Cageless physical collocation

As Attachment B to Dr, Currie's initial affidavit, SBC Ohio submitted a document captioned as "Description of Unbundled Network Element Cost Studies". This document describes in significant detail the methodology that SBC Ohio has used when preparing its TELRIC studies to determine the costs of providing UNEs, including a description of study methods, models, and input data (Dr. Currie Initial Affidavit at 3).

SBC Ohio states that all of its referenced cost studies are forward-looking, long run incremental studies that consider "the total quantity of the facilities" as required by 47 C.F.R. 51.505(b). SBC Ohio represents that, consistent with 47 C.F.R. 51.505(b)(1), these studies reflect existing wire center locations and the use of efficient technology that was available at the relevant time. For example, the switching studies reflect forward-looking, digital switch technology for host and remote switches at existing wire center locations. The local loop cost studies reflect the use of a meld of forward looking, digital loop carrier and copper technologies; while interoffice transport costs are based on digital technology. Consistent with 47 C.F.R. 51.507(f), SBC Ohio asserts that its TELRIC studies for unbundled loops and

interoffice transport entrance facilities were geographically deaveraged, based on three geographic zones or access areas, in order to account for the different costs of building and maintaining networks in different areas with varying population density. SBC Ohio points out that loop costs vary between the access areas due to differences in loop length, cable mixes and sizes, among other factors that vary with density. According to SBC Ohio, the PUCO has approved SBC Ohio's shared and common cost study allocated to each UNE using ratios based on direct expenses or TELRIC. (*Id.* at 7, 8).

SBC Ohio states that, consistent with 47 C.F.R. 51.505(d)(1), it did not include embedded costs in its costs for UNEs. For example, SBC Ohio did not include the cost associated with older technology such as analog end office switches or analog carrier systems. SBC Ohio does look to historical data for current efficient technologies already in use in the network in order to predict future costs for these same efficient technologies. The resulting costs developed from this data represent forward-looking costs.

Consistent with 47 C.F.R. 51.505(d)(2), SBC Ohio represents that its cost studies do not include retail costs, e.g., marketing, billing, and collection costs, associated with providing retail telecommunications services to subscribers who are not telecommunications carriers. Consistent with 47 C.F.R. 51.505(d)(3) and (4), SBC Ohio states that opportunity costs and revenue subsidies are excluded from the costs of UNEs. Consistent with 47 C.F.R. 51.511(a), SBC Ohio states that it apportioned the relevant network element costs over the total number of units of the element that it is likely to provide. SBC Ohio represents that its nonrecurring TELRIC studies submitted and approved in 96-922 utilize the same forward-looking methodology

that allows for the recovery of costs associated with the time required to install and disconnect a UNE; however, the TELRIC studies do not include the cost to combine UNEs. SBC Ohio indicates that its cost studies reflect a forward-looking view of the OSS processes (*Id.* 8-10).

SBC Ohio indicates that its pole attachment and conduit occupancy cost study approved by the PUCO in 96-922 was performed using the FCC developed methodologies in CC Dockets 86-212 and 96-181, respectively (*Id.*).

(f) Nondiscriminatory Access to OSS

SBC Ohio recognizes that it is required to provide nondiscriminatory access to OSS functions for preordering, ordering, provisioning, maintenance and repair and billing for UNEs and resale services per the FCC's First Report and Order in CC Docket No. 96-98.[43] To this end, SBC Ohio has made investments of millions of dollars to comply with these requirements (Cottrell Initial Affidavit of August 9, 2001, at 32).

SBC Ohio seeks to demonstrate that it provides nondiscriminatory access to its processes, procedures, and systems relating to preordering, ordering, provisioning, billing, maintenance and repair. It provides a detailed description relative to each of these stages of service provisioning (*Id.* at 6). SBC Ohio represents that it has participated in collaboratives for the purpose of discussing OSS improvements with

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43 *In re Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC rcd. 15,499 (rel. August 8, 1996) (*First Report and Order*).

the PUCO staff, Consumer Entities, and interested CLECs (*Id*.). As a result of these collaboratives, SBC Ohio agreed to make enhancements to its OSS interfaces (*Id*.). SBC Ohio states that the commitments for these enhancements are detailed in the joint progress reports in 00-942 (*Id*.).

SBC Ohio contends its OSS electronic interfaces and functionalities are ready for commercial use and exceed the checklist requirements of Section 271 of the 1996 Act (*Id.* at 7, 8). Specifically, SBC Ohio represents that its OSS has processed over three million manual and electronic orders and order supplements in the SBC Ohio region since January 2000 (*Id*.). SBC Ohio argues that the actual commercial usage is the most probative evidence concerning a system's operational readiness and ability to handle large commercial volumes (*Id.* at 13, 14).

Inasmuch as its OSS is the same as that for the entire SBC Midwestern region, SBC Ohio states that CLECs can construct a single interface and use it for operations in all five SBC Midwestern states (*Id.* at 8, 39). SBC Ohio describes the various organizations and procedures in place to support CLECs using SBC Ohio's OSS including the account team, LSC and local operations center (LOC) (*Id.* at 7, 8, 18, 19; Regan Initial Affidavit of August 9, 2001, at 5, 6; Brown Initial Affidavit of August 9, 2001, 5-7). SBC Ohio represents that CLECs can choose from a variety of interfaces to develop programs for access to SBC Ohio's OSS that match their particular services, volumes, technical expertise, resources, and future plans (Cottrell Initial Affidavit of August 9, 2001, at 9). SBC Ohio described the various interfaces available for preordering, ordering and provisioning, maintenance and repair and billing (*Id.* at 9-12, 57). Further, procedures have been established to ensure that CLECs receive non-discriminatory, timely, and efficient maintenance and repair services (*Id.* at 7).

Because SBC Ohio's systems are constantly evolving and improving, SBC Ohio explains that it has established a changed management process to ensure coordination with CLEC users as SBC Ohio introduces new versions of its interfaces and updates its systems (*Id.* at 12, 91). In addition, the changed management process addresses emergency situations, exceptions to the changed management process, training, and CLEC joint testing. It also provides for the identification and resolution of CLEC disputes related to proposed changes (*Id.* at 12, 95, 96). A 13-state SBC/CLEC interface changed management process was finalized as the result of a collaborative with interested CLECs in March 2001.

As SBC Ohio anticipates that CLEC usage of its OSS will continue to grow, it has implemented a capacity planning process to monitor system utilization statistics, and forecast future system utilization levels (*Id.* at 15). Using this process, SBC Ohio budgets and develops upgrade plans to "accommodate normal growth and new or special projects in order to support wholesale business processes while meeting performance measurement benchmarks (*Id.* at 16).

As an additional support tool for CLECs, SBC Ohio identifies that it has developed an interactive website, CLEC online, which contains the following:

(1) The CLEC handbook, which is a reference guide for the ordering, billing, provisioning and maintenance of local products and services.

(2) A section with descriptions and availability of instructional CLEC workshops.

(3) Accessible letters, by which SBC Ohio informs CLECs of the introduction, modification, and discontinuation of products and services, and the introduction of new promotions.

(4) A secure site within the CLEC designed to expedite and eliminate problems that may arise while accessing SBC Ohio's OSS.

(5) Performance measurement reports for the requesting CLEC, SBC Ohio retail, and aggregate CLEC performance.

(6) CLEC specific reports and information, such as reject reports.

(*Id.* at 22-24). In addition, SBC Ohio explains that the CLEC user forum (CUF) was developed to facilitate the discussion of issues and concerns between CLECs and SBC Ohio. These CUF meetings began in April 2000 and are held on a monthly basis to discuss critical process and operational issues, which impact the daily business practices of CLECs (Regan Initial Affidavit at 13, 14). As another means of CLEC support, SBC Ohio provides a variety of OSS training workshops to interested CLECs (*Id.* at 16).

For maintenance and repair, SBC Ohio states it makes available the same interfaces that are available to its own retail operations. CLECs can electronically

access maintenance and repair functions for UNE loops, UNE-P, and resale through SBC Ohio's electronic bonding trouble administration[44] (EBTA) interfaces or submit trouble reports by telephone (Cottrell Initial Affidavit at 83, 87).

SBC Ohio indicates that it uses four systems to generate usage data and to bill CLECs. SBC Ohio contends these systems provide CLECs with nondiscriminatory access to complete, accurate, and timely billing for SBC Ohio's products and services (Kagan Initial Affidavit of August 9, 2001, at 2, 7, 8, 9).

(g) Intellectual Property

SBC Ohio represents that although it is not aware of any action in which third-party intellectual property owners have asserted any claim or request for payment from CLECs for the use of UNEs, it will make the best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use UNEs or ensure that none are required in compliance with its regulatory obligations (Alexander Initial Affidavit at 29, 30).

B. Interested Entities' Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

It is AT&T's position that with respect to the key items of the Section 271 checklist, in particular interconnection and access to UNEs (including OSS), the 1996 Act requires that SBC Ohio must provide nondiscriminatory access. That is, AT&T

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44 To use EBTA, CLECs must establish another connectivity path with SBC Ohio for the EBTA interface (Cottrell Initial Affidavit at 88, 89).

believes that SBC Ohio must provision UNEs in a manner that is on a par with what SBC Ohio provides to itself in its retail activities and that does not disadvantage CLECs relative to SBC Ohio's retail operations (AT&T Initial Comments, Executive Summary at ii-iii).

(a) Combinations of Unbundled Network Elements

According to AT&T, at the core of the Section 271 shortcomings for SBC Ohio are the nondiscriminatory access to UNEs, including OSS, and the related performance measurement issues. AT&T has significant interest in these issues as they are essential to broad scale entry into residential markets, which is primarily based on the UNE-P. AT&T opines that SBC Ohio has not demonstrated that it meets these central checklist elements and surmises that SBC Ohio will be unable to make that showing for some time. AT&T contends, as of September 2001, SBC Ohio has ignored PUCO orders directing it to price and provision the UNE-P. Specifically, AT&T noted that SBC Ohio had not established final, PUCO-approved terms, conditions, and pricing for a host of essential product offering, including the UNE-P, EELs, line sharing, line splitting, loop qualification, and shared cage and cageless collocation (AT&T Initial Comments at 2).

AT&T contends that, in 00-1188, the PUCO directed SBC Ohio to provide those UNE combinations that it provides to its own retail customers in the ordinary course, and specifically rejected SBC Ohio's argument that it was only required to provide combinations that are "currently physically combined." AT&T represents that SBC Ohio's offer to provide UNE combinations beyond those that are "currently

physically connected," as delineated in the "Oh2A" interconnection amendment, is too restrictive in nature and does not satisfy its regulatory requirements (*Id.* at 3, 7).

AT&T posits that, prior to SBC Ohio's filing of its Section 271 application with the FCC, the PUCO must develop a comprehensive factual record concerning its compliance with the requirements of Section 271 of the 1996 Act and the status of local competition in Ohio (*Id.* at 11). AT&T believes that the question of whether or not SBC Ohio is discriminating against a CLEC is a fact-based inquiry demanding empirical evidence to determine whether elements and combinations can be ordered, provisioned, and billed in an "efficient, timely and accurate" manner and whether the level of access that SBC Ohio provides to CLECs is "equal" to that it provides to itself in terms of "quality, accuracy, and timeliness" (*Id.* at 13, 14).

It is AT&T's position that CLECs can only serve mass market residential customers on a broad basis via UNE-P (Gilan Initial Affidavit September 20, 2001, at 26). AT&T disagrees with SBC Ohio's position that, through its proposed Oh2A agreement amendment, it is only obligated to make UNE combinations available generally only if they are "currently combined," meaning that the elements in question are literally physically connected and capable of providing service without physical work being performed by SBC Ohio. AT&T points out that SBC Ohio does not consider additional lines to existing locations (a second "fax" line, for example) or the provision of service at a new location (e.g., a new residence) to fall within its "existing combinations" category. AT&T also criticizes the Oh2A agreement amendment as it will allow SBC Ohio to control the terms of competitive entry using UNEs in Ohio, and does not comply with the PUCO's orders requiring SBC Ohio to offer UNE combinations without SBC Ohio's restrictions or limitations (*Id.* at 35-40).

In response to SBC Ohio's July 15, 2002 filing of Mr. Alexander's supplemental affidavit to provide "Ohio existing UNE combinations" including the UNE-P, Mr. Gillan filed a supplemental affidavit on behalf of AT&T on August 14, 2002. Mr. Gillan asks the PUCO to use this proceeding to: (1) establish that each wholesale obligation SBC Ohio supports through affidavits in this proceeding should be a continuing obligation that SBC Ohio cannot withdraw without the express approval of this PUCO, and (2) to establish that the PUCO has the authority to require additional unbundling. It is AT&T's opinion that Mr. Alexander's supplemental affidavit to provide existing UNE combinations including the UNE-P is not a commitment to continue to offer such combinations, but only a description of what SBC Ohio offers today. AT&T emphasizes that interLATA relief is a permanent change in the market and that SBC Ohio should not be allowed to reduce its competitive offerings without PUCO approval (Gillan Supplemental Affidavit of August 14, 2001, at 4, 5). Also, on October 11 and 18, 2002, AT&T along with the 6th PR-Joint CLECs filed comments and reply comments regarding SBC Ohio's October 4, 2002 proposed "UNE combinations amendment."

(b) Pricing of UNEs

AT&T presented testimony of Mr. James Henson to articulate its position on SBC Ohio's pricing of UNEs. Mr. Henson states that SBC Ohio has not shown in "a concrete and specific legal" manner that it has met all of its obligations to furnish the checklist items (i.e., interconnection, UNEs, collocation services etc.) at prices and other terms that would satisfy the requirements of Section 271 of the 1996 Act. Specifically, AT&T asserts that Checklist Item 2 of Section 271 of the 1996 Act

requires that a BOC must provide "nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the 1996 Act. (Henson Initial Affidavit of September 20, 2001, at 3, 4). AT&T believes that SBC Ohio's draft "271" application is premature because pricing is not available for certain UNEs and certain services and because it has not allowed the PUCO to complete its work in reviewing SBC Ohio's TELRIC studies.

AT&T asserts that, as of the filing of its initial comments, SBC Ohio's prices for critical CLEC-required functionalities are either not yet available or are currently priced at levels that are excessive. According to AT&T, until products and pricing have been defined in a specific and concrete manner and shown to be compliant with the relevant legal standards, competitive carriers using those products will not have the necessary certainty to conduct business (*Id.* at 5, 6). Therefore, AT&T concludes that SBC Ohio's representation that it has fully complied with its checklist obligations is premature (*Id.* at 10).

According to AT&T, the process for establishing the prices for UNEs results from a unique and complex interaction of product definition and the development of associated terms and conditions and costs. AT&T opines that SBC Ohio's compliance problem with Section 271 requirements fall into three broad categories:

(1) SBC Ohio has the obligation to provide certain offerings (including line splitting, broadband service and EELs) for which the costing and pricing process had not yet even started as of the filing of AT&T's initial comments (*Id.* 11, 12, 17).

(2) While the costing and pricing review had commenced for other offerings, such analysis was not completed as of the filing of AT&T's comments. These offerings include: custom routing of OS and DA via AIN, line sharing, sub-loops, the UNE-P and its associated nonrecurring charges, ULS-ST (a key component of the UNE-P) xDSL loop conditioning, shared cage collocation, and cageless physical collocation (*Id.* 17).

(3) SBC Ohio has certain approved prices that, based on current additional information, are obsolete and have fatal problems passing muster with the TELRIC standard (*Id.* 11).

With respect to the third classification, AT&T identified four specific concerns: (1) SBC Ohio abandoned use of the switching cost information system (SCIS) model in favor of the SBC regional partners in provisioning (ARPSM) model; (2) SBC Ohio's nonrecurring studies are out of date since they fail to take into account the mechanization and process improvements with the passage of time; (3) the Arthur Andersen study that SBC Ohio used to develop joint and common costs has long since been abandoned by SBC Ohio and replaced with a more straightforward study; and (4) SBC Ohio continues to assess nonvolume sensitive costs (NVS) to the purchasers of UNEs, despite the fact that the PUCO, in its June 19, 1997, Opinion and Order in 96-922, ordered SBC Ohio to cease such charges after three years.

According to AT&T, the existence of these identified problems cannot possibly be in concert with any finding that SBC Ohio is in compliance with the cost requirements of the 1996 Act (*Id.* 21).

In response to SBC Ohio's July 15, 2002, filing of Mr. Alexander's supplemental affidavit regarding the provisioning of existing UNE combinations, including UNE-P, AT&T witness Henson, on August 14, 2002, filed a Supplemental Affidavit. Mr. Henson does not object to SBC Ohio's July 15th offering. However, he criticizes SBC Ohio's application filed on May 31, 2002, in 02-1280, to revise wholesale prices for all UNEs. AT&T opines that, if such application is pursued, it would constitute an enormous waste of the PUCO and industry resources just when the industry's focus is moving from the hearing room to the marketplace (Henson Supplemental Affidavit at 2, 3). He states that SBC Ohio's proposal would double prices for the UNE-P and would increase the UNE-P migration charge from $0.74 to $12.80 (*Id.* 3). Accordingly, he recommends that the PUCO should require SBC Ohio to cap current UNE prices for three to five years as a condition of a favorable recommendation of SBC Ohio's Section 271 application.

(c) Nondiscriminatory Access to OSS

AT&T states that SBC Ohio is obligated to provide CLECs with nondiscriminatory access to OSS (Samonek Initial Affidavit of September 21, 2001, at 2). AT&T submits that SBC Ohio's OSS implicates almost every checklist item, thus, "no conclusions can be made about SBC Ohio's compliance with any of these checklist items until a thorough investigation of SBC Ohio's OSS is complete" (*Id.*).

AT&T states that SBC Ohio's initial informational filings lack detail concerning how SBC Ohio's OSS is performing in the commercial environment and, instead, focus on generic descriptions of the systems and processes that SBC Ohio has, or intends to have, in place (*Id.* at 10). AT&T contends that these filings "impart no information whatsoever on whether SBC Ohio's OSS is working as billed" (*Id.*). AT&T emphasizes that BearingPoint has numerous observations and exceptions which are indicative of significant OSS-related problems (*Id.* at 12).

AT&T discusses the various problems which it has experienced with SBC Ohio's OSS interfaces. AT&T states is has had numerous problems with SBC Ohio's LEX and VERIGATE OSS interfaces[45] (*Id.* at 46). For example, AT&T references the significant deficiencies in customer service records (CSR) available from the VERIGATE application. AT&T also reports that it has experienced hold times in excess of 30 minutes waiting to access the LEX/VERIGATE. interfaces. AT&T provides that this type of delay is not captured in performance measures since they relate to time intervals prior to the time when the CLEC passes the order to SBC Ohio (*Id.* at 47). AT&T concludes that based on the type of problems it has experienced and the explanations provided, the LEX/VERIGATE will not support "even minimal commercial entry" by a CLEC (*Id.* at 47).

AT&T states that SBC Ohio has acknowledged it has no known fix for the above problems and does not expect SBC Ohio's performance level for OSS to improve until after the release of LSOG 5 (the anticipated release date was March 2002) (DeYoung Initial Affidavit of November 15, 2001, at 5, 8, 18). AT&T states that

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45 VERIGATE is the preordering web-based GUI, LEX is the ordering GUI interface.

documentation for SBC Ohio's LSOG 4 release was rife with errors, which appeared to be tied to SBC's failure to fully account for idiosyncrasies in SBC Ohio's back-end systems, SBC's failure to fully account for agreements reached in state OSS collaboratives, or simply were deficient in regard to attention to detail" (*Id.* at 9).

AT&T recounts that SBC Ohio's inability to give CLECs' timely and accurate information from informed and responsible representatives and resolve OSS testing and performance problems have been issues since the SBC/Ameritech Ohio merger (*Id.* at 7; Samonek Initial Affidavit at 55-58). AT&T identifies specific concerns regarding SBC Ohio's rollout of LSOG 4 and the adverse effect that these problems had on the CLECs ability to avail themselves of the LSOG release in a timely manner (*Id.* at 33, 35, 37-40, 41, 43, 45 52-55).

AT&T states is has discussed numerous performance measure reporting errors with SBC Ohio (DeYoung Initial Affidavit at 19, 20). Some of those performance measurements are:

PM 13 - Order process percent flow through;
PM 13.1 - Total order process percent flow through;
PM 56 - Percent installations completed within customer requested due date; and
PM 111 - Average interval for DA database for facility based CLECs.

AT&T addresses a dispute regarding the time stamping of all firm order commitments. AT&T states that without time stamping CLECs cannot accurately

verify or reconcile the data used by SBC Ohio to report its performance measures (Samonek Initial Affidavit at 48, 49). In addition, AT&T highlights the FCC's actions regarding the inaccuracies identified in some of the affidavits submitted for SBC's 271 applications in Oklahoma and Kansas. Therefore, AT&T contends that SBC Ohio's performance reports should be approached with skepticism (DeYoung Initial Affidavit at 6, 7). AT&T contends that it has already uncovered discrepancies in performance data reported by SBC in the Ameritech states (*Id.* at 7).

AT&T believes that SBC Ohio is spreading its limited resources too thin, resulting in highly visible process breakdowns in the SBC Ohio region (*Id.* at 16, 17, 23). Although LSOG 5 was intended to correct a number of the problems identified by AT&T, the company has concerns relative to the new release and believes that the new release should be tested (*Id.* at 7, 22, 27).

Next, AT&T states that SBC Ohio has not demonstrated that it is providing OSS to CLECs for line sharing over fiber-fed loops (Finney Initial Affidavit of September 20, 2001, at 4). Also, AT&T witness Finney states that "information provided in discovery in the Michigan Section 271 proceeding demonstrates that SBC Ohio's OSS appear to discriminate in favor of its affiliates" (*Id.*).

AT&T also states that in order to interface with Ameritech Advanced Data Services of Ohio, Inc. (AADS) for the purpose of purchasing resold DSL transport service, CLECs must build interfaces separate from those used to interface with SBC Ohio's OSS. AT&T considers this requirement to be both discriminatory and burdensome (*Id.* at 14). In addition, AT&T views AADS' OSS as limited in as much as AADS will provide electronic access to its OSS for only some services, while

offering only manual submission and processing for services other than DSL transport (*Id.* at 16, 17). Further, AT&T would like to see the Ohio MTP modified to include performance measurements for DSL resale (*Id.* at 2-4).

AT&T argues that SBC Ohio's directory listing access and order process for CLECs is discriminatory and insufficient to support commercial order volumes (Samonek Initial Affidavit at 59). AT&T argues that the directory listing processes are burdened with inefficient manual processing that raise the likelihood of fatal errors and delays as order volumes increase (*Id.* at 59, 60). AT&T argues that SBC Ohio's directory listing processes for CLECs are discriminatory because the limitations on the processing of information between interface and the legacy systems prevent a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself (*Id.* at 66). Specifically, AT&T objects to the fact that for its own retail operations, SBC Ohio provides a fully integrated local service/directory listing electronic interface, whereas for facilities-based CLECs, SBC Ohio requires that the CLEC utilize separate manual interfaces (e.g., fax, phone call, or email) with respect to edits, rejection notices, and completion notices (*Id.* at 62, 65, 66).

AT&T contends that CLEC orders do not flow through SBC Ohio's legacy systems to the same extent as SBC Ohio's retail orders. AT&T states that SBC Ohio's over reliance on manual intervention is problematic, and that SBC Ohio has done little to improve in this area (*Id.* at 70, 71).

AT&T states the PUCO should closely monitor SBC Ohio's flow-through performance. Flow -through performance is defined as the ability of CLEC orders to

be passed through SBC Ohio's legacy systems electronically to the same extent as SBC Ohio retail orders (*Id.* at 69). AT&T contends the "importance of flow-through can not be overstated" for the following reasons:

> Manual intervention in the ordering process increases the chance for human error especially as volumes increase.
>
> Flow-through reduces ordering intervals and promotes quicker service to CLEC customers.
>
> Short intervals mean that CLECs can correct their rejections quicker.

(*Id.* at 70).

2. WorldCom's Initial Comments/Affidavits

(a) Combinations of UNEs

It is WorldCom's position that there are a number of issues yet to be resolved prior to SBC Ohio meeting its checklist requirements in Ohio. WorldCom points out that, at the time of its comments, SBC Ohio's proposed UNE-P pricing was unreasonably high, and the PUCO had not yet established permanent UNE-P rates. As a result, neither WorldCom nor any other CLEC has entered the Ohio residential market on a statewide, mass market basis. WorldCom conjectures that, once WorldCom and other carriers enter the market in Ohio, there must be a period of time during which it can be determined that SBC Ohio's systems will be able to

handle the volume of orders similar to that which is being experienced in other states.

WorldCom represents that its mass market entry into the Ohio residential local exchange market is contingent upon appropriate UNE-P pricing. WorldCom believes that it is equally important that the PUCO correctly determine the circumstances under which SBC Ohio is required to provide UNE-P (i.e. in situations where the customer requests a second line or is moving to a location where the previous resident was a SBC Ohio customer) (WorldCom Initial Comments at 3, 11).

(b) Pricing of UNEs

WorldCom points out that appropriate pricing for line sharing, xDSL loop conditioning, cageless and shared collocation and UNE-P (including shared transport) are matters that were, as of the filing of its comments, pending resolution before the PUCO in 96-922.

(c) Nondiscriminatory Access to OSS

WorldCom's concerns relative to SBC Ohio's OSS are based on its experiences in Michigan and Illinois. The company contends that those experiences are similar to those it would experience in Ohio inasmuch as the OSS systems are the same throughout the SBC-Ameritech five state region, which includes Indiana, Illinois, Michigan, Ohio, Wisconsin (Lichtenberg Initial Affidavit of September 20, 2001, at 3).

WorldCom recounts that it began offering UNE-P residential service in Michigan and Illinois in December 2000. WorldCom represents that it has encountered significant problems which impede full service provisioning in those two states (*Id.*). WorldCom believes that these problems suggest that SBC Ohio may not be able to support additional volumes of orders within its footprint, particularly as more competitors enter and volumes increase (*Id.*). WorldCom opines that the level of its entry into the Ohio residential market will be dependent on the extent to which SBC Ohio makes progress in addressing or correcting its OSS problems in order to support commercial entry (*Id.* at 6). WorldCom also argues that, as of the filing of its initial comments, SBC Ohio should not be considered even close to compliance with the Section 271 checklist in Ohio due to the fact that there has not been sufficient residential activity necessary for the commercial volume testing of SBC Ohio's OSS (*Id.* at 4).

WorldCom identifies the following defects or problems related to SBC Ohio's OSS (*Id.* at 5, 6):

(1) Missing service order confirmation (SOC) notices.

(2) Large numbers of orders do not flow through SBC Ohio's ordering systems.

(3) Refusal or difficulties processing line splitting orders.

(4) Refusal to process vertical features with UNE-P.

(5) SOCs being sent prior to switch translations being completed.

(6) Switch translation problems.

(7) Improper OS/DA branding.

(8) Extremely lengthy VERIGATE GUI response times.

In regard to the issue of missing SOC notices, WorldCom states "it has spent millions of dollars developing and testing an automated ordering system to exchange electronic EDI messages with SBC Ohio for local transactions" (*Id.* at 7). If WorldCom fails to receive an acknowledgement of its order after three days, it utilizes SBC Ohio's help desk/trouble ticket process to determine why the order has not elicited the appropriate electronic response (*Id.* at 9). According to WorldCom, the use of manual intervention to track the status of orders increases WorldCom's operating costs and inhibits its ability to efficiently serve customers (*Id.*).

WorldCom represents that SBC Ohio's failure to send any acknowledgements or confirmations impairs WorldCom's ability to accurately bill its customers, which ultimately results in lost revenues and customer dissatisfaction (*Id.* at 10, 11). WorldCom opines that SBC Ohio's problems translating orders likely indicates problems in other areas of its OSS as well (*Id.* at 16). WorldCom submits that "the Commission should be actively monitoring the quality of SBC Ohio's OSS systems

through the third-party testing, rather than spending time contemplating SBC Ohio's 271 application (*Id.* at 17).

With respect to its claims that large numbers of orders do not flow through SBC Ohio's ordering systems, WorldCom claims that, for at least the September 2001 time frame, SBC Ohio's calculation of flow-through percentages, excluded orders that are covered by contract. WorldCom represents that SBC Ohio defines contracts to include normal residential tariffed service offerings, also known as call plans, to which a very large percentage of SBC Ohio customers subscribe. Therefore, WorldCom concludes that SBC Ohio excluded approximately 75 percent of WorldCom's orders when calculating flow-through percentages (*Id.* at 18).[46]

With respect to line splitting, WorldCom claims it is very important for its entry in Ohio that SBC Ohio process line splitting orders. Specifically, WorldCom states that it is very important to WorldCom's mass market entry in Ohio that existing SBC Ohio line splitting customers be allowed to migrate their voice service to WorldCom just like other voice customers (*Id.* at 19).

WorldCom takes issue with SBC Ohio refusing to provision call control and certain other AIN-based features as part of UNE-P. WorldCom is also concerned regarding the accuracy with which SBC Ohio completes WorldCom's UNE-P orders (*Id.* at 20). In addition, WorldCom contends that "there should be no occasion where SBC Ohio can have discretion to alter an order and then claim that the original order was accepted. WorldCom believes that SBC Ohio's conduct in this regard violates

accepted industry practice regarding the manner of accepting and provisioning orders (*Id.* at 21).

WorldCom argues that SBC Ohio's practices are not capable of smoothly processing CLEC-to-CLEC migrations (*Id.* at 21). WorldCom contends that SBC Ohio's difficulties in this area causes both the gaining and losing CLEC to bill customers and results in customers losing dial tone when one CLEC assumes a migration is completed when it has actually not occurred (*Id.* at 22).

WorldCom asserts that SBC Ohio is incapable of properly implementing UNE-P switch translations that would permit another carrier, other than SBC Ohio, to provision intraLATA toll traffic (*Id.*). WorldCom states that, while SBC Ohio has been working on addressing this problem, the cause had not yet been identified as of the time of the filing of its comments (*Id.* at 23).

In regard to OS/DA branding, WorldCom complains that, based on its experiences in Michigan and Illinois, customers will receive SBC Ohio branding for OS/DA calls for five business days, and possibly longer, after they have migrated from SBC Ohio (*Id.* at 23-34).

WorldCom complains about the difficulties it has experienced in utilizing the LEX/VERIGATE interfaces to verify the accuracy of feature provisioning by SBC Ohio for WorldCom's customers (*Id.* at 24, 25). WorldCom states that sometimes the

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46 WorldCom recognized that SBC Ohio intended to upgrade its OSS sometime in 2002 so that it would be able to automatically process residential orders with contracts (*Id.* at 18, 19).

interfaces are difficult to access or work with, and that it has taken as long as nine days for SBC Ohio to respond to trouble tickets issued for the problems (*Id.*).

WorldCom also discusses the difficulties it has experienced with the provisioning of DSL services to its customers due to SBC Ohio changing its business practices without notice (Noble Initial Affidavit of September 20, 2001, at 3). WorldCom contends that the data requirements on the order form will change without notice, and that such changes will prevent WorldCom from submitting orders (*Id.*). Further, WorldCom complains that SBC Ohio's CLEC handbook contains inaccurate, conflicting and missing information that affects WorldCom's ability to order DSL compatible loops (*Id.* at 4).

Finally, WorldCom states SBC Ohio's performance in the provisioning of DS1 loops is inadequate (Hussey Initial Affidavit of September 20, 2001, at 2). WorldCom's problems with SBC Ohio's provisioning of DS1 loops include "the number of past due orders and the length of time it takes for SBC Ohio to provision the loops (*Id.*).

(d) Intellectual Property

WorldCom contends that SBC Ohio' proposal regarding third-party intellectual property rights is not reasonable and fails to comply with the FCC's intellectual property order[47] (WorldCom's Initial Comments of September 20, 2001, at

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47 *In re the Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Network Elements*, CC Docket 96-98 (rel. April 27, 2000) (*Intellectual Property Order*).

12). WorldCom references the fact that this issue was also raised in the context of 01-1319.

3. Sprint's Initial Comments/Affidavits

(a) General Access to UNEs

It is Sprint's position that SBC Ohio's refusal to allow CLECs access to the HFPL for all loops, including those that are fiber-fed and commonly referred to as "Project Pronto", substantially limits a CLEC's ability to serve customers and constitutes SBC Ohio's failure to satisfy the Checklist Item 2 requirements. Sprint contends that the FCC, in its line sharing order[48], unbundled the HFPL. Therefore, Sprint believes that SBC Ohio has an obligation to offer CLECs access to the HFPL on a UNE basis consistent with the FCC's *Line Sharing Order*. However, in interconnection negotiations, Sprint contends that SBC Ohio has defined the HFPL as the frequency above the voice band on a copper loop facility that is being used to carry traditional, analog circuit-switched, voice band transmissions (i.e., limiting its definition of HFPL to copper loops excluding fiber-fed loops).

(b) UNE Combinations

It is Sprint's position that SBC Ohio has failed to comply with Checklist Item 2 because it does not provide the UNE-P by making it available to CLECs when it is "ordinarily combined" as that term is properly defined. Sprint submits that the UNE-

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48 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Fourth Report and Order ¶ 25 (Adopted November 18, 1999, rel. December 9, 1999) (*Line Sharing Order*).

P should be made available when SBC Ohio customarily combines the elements for its customers, even if the elements are not currently combined at the time a CLEC orders the platform. Sprint asserts that SBC Ohio should not be permitted to limit its UNE-P offering such that it must be providing existing service to the end user customer before a CLEC can request a UNE combination to provide service to that particular end user. Sprint believes that SBC Ohio's interpretation is anticompetitive and imposes inefficient costs on both SBC Ohio and CLECs. In addition, Sprint concludes that such an interpretation provides SBC Ohio with a competitive advantage since a CLEC could not compete for new customers (i.e., customers without existing SBC Ohio service) using a UNE combination strategy (Sprint Initial Comments of September 20, 2001, at 10, 11).

4. XO Ohio's Initial Comments/Affidavits

(a) Nondiscriminatory Access to OSS

XO Ohio states its orders get unnecessarily delayed because of conflicts between SBC Ohio's assignment center and the LOC (Goodfleisch Initial Affidavit of September 20, 2001, at 2). According to XO Ohio, if the assignment center has not completed the facility assignments at least two days prior to the originally schedule firm order commitment (FOC) date, the LOC will refuse to schedule the conversion, thus forcing XO Ohio to request a new conversion date, typically making the customer wait another five days (*Id.* at 2). Also, XO Ohio complains that it can experience delays that can last months if SBC Ohio determines it has no facilities available to fill an XO Ohio order (*Id.*).

XO Ohio contends that SBC Ohio's procedures and time frames for provisioning new facilities or integrated digital loop carrier (IDLC) facilities for XO Ohio in order to serve end users is unnecessarily burdensome and time-consuming (*Id.* at 4). In addition, XO Ohio states that when SBC Ohio updates a FOC for an order in "jeopardy" status, the EDI update is often misleading (Malmborg Initial Affidavit of September 20, 2001, at 2).

XO Ohio alleges that SBC Ohio only meets its commitment times for XO Ohio trouble tickets 60 percent of the time, and in many cases the trouble is not resolved until 48 hours after it is first reported (Myers Initial Affidavit of September 20, 2001, at 2). XO Ohio also states that SBC Ohio's EBTA system automatically closes a trouble ticket 24 hours after it is submitted if SBC Ohio dispatches a technician over a weekend. However, if XO Ohio finds out on Monday that the trouble was not resolved, XO Ohio has to submit another ticket that starts the 24 time frame over again (*Id.*).

XO Ohio contends that SBC Ohio has problems supporting orders placed with the SBC Ohio high-capacity center. Specifically, XO Ohio states that SBC Ohio only meets the FOCs on some of XO Ohio's high-capacity orders (Zablo Initial Affidavit of September 20, 2001, at 1). According to XO Ohio, SBC Ohio missed 21 percent of its due dates during the month of July 2001, and for each missed FOC, the installation did not occur until 20 days after the original FOC date (*Id.*). Additionally, XO Ohio contends that SBC Ohio only meets its repair commitment times for high-capacity service ten percent of the time (Myers Initial Affidavit at 2). Also, XO Ohio represents that after it receives order completion notices, it has had difficulty being able to test the circuit to ensure it is working properly (Zablo Initial Affidavit at 2).

XO Ohio states that SBC Ohio does not always provide the appropriate notice (a flex test notification) to XO Ohio that it has completed an installation (*Id.* at 2; Huffman Initial Affidavit of September 20, 2001, at 2). XO Ohio also complains about the lack of information it receives after it submits trouble tickets for high-capacity circuits and the 45-minute hold times it experiences when it calls to check on the status of an order (*Id.* at 2; Zablo Initial Affidavit at 2, 3).

5. NuVox's Initial Comments/Affidavits

(a) UNE Combinations

NuVox identifies itself as a facilities-based CLEC entity in four Ohio markets - Akron, Columbus, Dayton (all SBC Ohio territories) and Cincinnati. It is NuVox's position that SBC Ohio fails to meet Checklist Item 2 by virtue of its failure to comply with the FCC's orders regarding conversion of loop-dedicated transport facilities from special access circuits to combinations of UNEs (EELs). NuVox states that the FCC has clearly indicated that CLECs have the right to convert special access circuits to EELs combinations. In support of its position, NuVox highlights FCC rule 51.315(b), which it believes prohibits SBC Ohio from separating those network elements. NuVox references the fact that the FCC in its *Supplemental Order* and *Supplemental Order Clarification* has clarified that the conversion of special access to EELs can occur in those situations in which the facilities are used to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

NuVox states that it has direct experience with SBC Ohio's performance converting special access facilities to EEL combinations, both in Ohio and in Indiana. That experience demonstrates that SBC Ohio effectively ignored its obligations under the law and the FCC's rulings regarding UNE combinations for many months, and that SBC Ohio has a track record of failing to perform these conversions once an internal process was established. Specifically, in February 2001, NuVox states that it commenced discussions with SBC Ohio regarding its processes for converting many of its existing special access facilities to EELs combinations. NuVox believes that it was immediately obvious that SBC Ohio had not developed systems and/or established the internal procedures necessary to process these conversions. NuVox reports that between April and May 2001, SBC Ohio disconnected a total of 50 out of approximately 270 NuVox customers in Akron and Columbus whose facilities were being converted from special access to EELs combinations.

On May 1, 2001, NuVox directed SBC Ohio to halt all further processing of access service requests (ASR) until SBC Ohio could identify what had caused these service outages and demonstrate that corrective actions had been implemented which would avoid any additional incidents. NuVox states that SBC Ohio's inability to convert special access facilities to UNE loop-transport combinations imposed a continuing and substantial administrative and financial burden. NuVox reports that in early June 2001, SBC Ohio reported that it had completed an extensive analysis of the service outage incidents and had implemented revised procedures to protect against further incidents. Accordingly, in August 2001, NuVox began submitting new ASRs. NuVox states that, as of the filing of its comments, it is unclear as to whether SBC Ohio has now rectified the deficiencies in its conversion systems and procedures (NuVox Initial Comments of September 20, 2001, at 5-9).

Finally, NuVox states that these facts refute SBC Ohio assertions that it provides access to UNEs in manner consistent with the requirements of the 1996 Act. NuVox asserts that Section 271 of the 1996 Act requires a showing that SBC Ohio is providing and has fully implemented each item of the competitive checklist. To satisfy the requirement that it is providing each item of the checklist, NuVox believes that SBC Ohio must demonstrate that not only is it under a "concrete and specific legal obligation" to furnish the item (e.g., pursuant to one or more interconnection agreements), but also that it "is presently ready to furnish each item in the quantities that competitors may reasonably demand and at an acceptable level of quality" (*Id.*).

6. CoreComm's Initial Comments/Affidavits

(a) Combination of UNEs

It is CoreComm's position that although the United States Supreme Court affirmed that the FCC rules require ILECs to provide requesting CLECs with combinations of UNEs, including the UNE-P,[49] SBC Ohio "dragged its feet" on implementing this requirement, and did not make the product available at all until well into 2001 (just before it submitted its Notice with the PUCO) (CoreComm Initial Comments at 17).

CoreComm asserts that SBC Ohio not only delayed offering the UNE-P to requesting CLECs until the last possible moment, but when the product was finally made available, SBC Ohio still had not implemented appropriate procedures to

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49 *AT&T Corp. v. Iowa Utils. Bd.* 119 S. Ct. 721, 737 (1999).

process CLEC UNE-P orders. The lack of procedures has resulted in numerous problems for CoreComm in almost every conversion. CoreComm considers these problems to be highly labor-intensive for CoreComm to correct (*Id.* at 19). Among the most pervasive of these recurring problems include the following:

(1) Dial tone problems - many CoreComm customers have reported loss of dial tone and/or static on their line.

(2) Outbound calling problems - CoreComm customers attempting to make outbound calls reported that they were unable to dial various telephone numbers.

(3) Long distance service - upon conversion to UNE-P, a number of CoreComm customers reported losing their presubscribed long-distance service.

(4) Loss of feature functionality - a myriad of loss-of-feature issues were reported by CoreComm customers.

(5) Caller ID provisioning - SBC Ohio regularly provisions CoreComm's customers with Caller ID without the customer requesting the service.

(6) Intercept referral messages - SBC Ohio is unable (or unwilling) to provide CoreComm UNE-P customers with intercept referral message service.

(*Id.* at 19-21).

CoreComm opines that SBC Ohio imposes unreasonable restrictions on "new" UNE-P combinations. For example, SBC Ohio does not permit CLECs to provide service via UNE-P to customers that are not already served by SBC Ohio. Similarly, SBC Ohio will not install new CoreComm lines (i.e., second lines) to customers already served by SBC Ohio. Accordingly, CoreComm represents that, as a practical matter, it can only provide service to current SBC Ohio customers, or CoreComm customers that receive resold SBC Ohio service. This places enormous limitations on CoreComm's ability to compete against SBC Ohio, because it means that CoreComm cannot directly provision new customer orders or existing customer move orders via UNE-P.

Further, CoreComm contends that SBC Ohio will not provide resold service for CoreComm customers at addresses that have not previously received any telephone service at all. Rather, CoreComm avers that its LSRs are returned with a "no facilities" reject notice, and CoreComm is informed that service cannot be provided within 30 days. However, CoreComm submits that, if the customer places an order for new service directly with SBC Ohio, the service will usually be up-and-running within a few days. Although SBC Ohio views a customer move as the functional equivalent of a new order since the customer is not currently receiving SBC Ohio service at the new location, CoreComm points out that, in many cases, some other customer is already receiving service from SBC Ohio. (*Id.* 22-24).

It is CoreComm's opinion that SBC Ohio's UNE-P product is not compliant with Checklist Item 2 since SBC Ohio is unable to provide CoreComm with a DUF on a consistent basis. CoreComm believes that the DUF is an indispensable part of unbundled switching and UNE-P because CLECs cannot bill their customer for usage-based services (including toll and usage-based local service) if it does not receive a DUF from SBC Ohio. While SBC Ohio passes DUF to CoreComm a majority of the time, CoreComm indicates that it regularly fails to do so an average of two or three times per month. As a result, CoreComm is unable to bill its customers for many thousands of dollars a month in calls (*Id.* 28, 29).

CoreComm points out that SBC Ohio's UNE-P product improperly routes certain local and local plus traffic as long distance traffic. According to CoreComm, for certain switches, SBC Ohio's routing logic incorrectly sends any outbound UNE-P calls, whether local or long distance, on certain switches to the end-user's presubscribed long distance carrier rather than allowing for them to be routed over the local network where appropriate. Although SBC Ohio is aware of this systemic problem, CoreComm contends that it has not resolved the routing issues. Instead, CoreComm represents that it is required by SBC Ohio to send each such problem as a single and separate trouble ticket to be analyzed and repaired, which takes weeks to complete. Meanwhile, CoreComm asserts that its reputation is harmed and its representatives waste valuable internal resources on a problem that should not exist. (*Id.* 29, 30).

Finally, CoreComm states that SBC Ohio refuses to provide resale related voice mail services (average rate of $3.70 per line per month) in conjunction with UNE-P lines. Instead, SBC Ohio has offered a less "robust" product which will cost

between $6.50 and $10.95 per line per month, along with a "conversion charge" of $19.95/line (*Id.*)

(b) Pricing of UNEs

CoreComm posits that SBC Ohio's Notice is largely premised on interim rates. Specifically, CoreComm points out that, as of September 2001, SBC Ohio had yet to establish final, PUCO-approved terms, conditions or prices for numerous important wholesale products, including the UNE-P, line sharing and line splitting, loop conditioning, shared caged collocation, and cageless collocation. Moreover, as discussed below, CoreComm believes that several of these rates clearly exceed lawful levels. CoreComm highlights that the FCC has stressed the importance of permanent pricing in its New York 271 order, noting that "[u]ncertainty caused by a BOC's reliance on interim rates as a basis for Section 271 application can only be minimized if the interim rates are for a few isolated ancillary items, . . . and the state has made reasonable efforts to set interim rates in accordance with the 1996 Act and the PUCO's rules."[50]

As further support for its position, CoreComm cites to the U.S. Department of Justice's recommendation that the SBC-Missouri application be denied because of concerns about violations of TELRIC pricing principles, and SBC's inability to demonstrate a history of sustained compliance.[51] CoreComm opines that the

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50 *In the Matter of the Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New Yor*k, Memorandum Opinion and Order, at ¶ 258, 216 FCC Rcd. 75 (December 1999) (*New York* 271 Order).

51 Evaluation U.S. Department of Justice (May 9, 2001) at 19.

presence of so many non-compliant interim rates creates an untenable amount of uncertainty with respect to SBC Ohio's Ohio rates and signifies that there is no commercial experience in Ohio demonstrating a period of sustained compliance (*Id.* at 15-17).

As to UNE-P pricing, CoreComm asserts that, as of the filing of it is comments, SBC Ohio charges a nonrecurring "conversion" charge of $111.86 for each CoreComm resale customer converted to the UNE-P. Since SBC Ohio has offered nothing to justify this excessive charge, it is CoreComm's view that only the PUCO-approved rate for "change orders" ($9.30) should be assessed (*Id.* at 21).

(c) Nondiscriminatory Access to OSS

CoreComm states it has encountered numerous recurring problems with SBC Ohio's OSS over the years (*Id.* at 30). CoreComm lists several causes for these recurring problems including:

(1) SBC Ohio does not adequately test and document its OSS, especially changes to it.

(2) SBC Ohio does not have adequate resources to support the design and implementation of its OSS interfaces.

(3) SBC Ohio does not have enough account managers to work with CLECs.

(4) SBC Ohio employees do not take ownership of the problems presented by CoreComm.

(*Id.* at 30, 31).

CoreComm describes examples of problems it has experienced with SBC Ohio's OSS that have negatively impacted the company (*Id.* at 32). First, CoreComm states that SBC Ohio's OSS has not been sending provisioning completion notifications. As a result, CoreComm has lost revenues and experienced service degradations (*Id.*). Secondly, CoreComm states that it has encountered numerous "bottom-line and service affecting difficulties" working with SBC Ohio's maintenance and repair OSS (*Id.* at 33). Additionally, CoreComm states it has doubts about the integrity and accuracy of SBC Ohio's technicians reporting of whether or not trouble was found on SBC Ohio's network (*Id.* at 33). CoreComm contends that SBC Ohio under-reports the amount of trouble found on its network by 15 percent, which shifts the costs of repair to CLECs and allows SBC Ohio to avoid making remedy payments (*Id.* at 34). Lastly, CoreComm contends that SBC Ohio has performed service work directly for CoreComm customers absent authorization from CoreComm, thereby undermining CoreComm's relationship with its customers (*Id.*).

7. Joint CLECs' Initial Comments/Affidavits

(a) General Access to UNEs

It is the Joint CLECs' position that SBC Ohio cannot demonstrate current compliance with Checklist Item 2, because the information contained in SBC Ohio's

affidavits relates to policies and procedures which should be employed when provisioning UNEs to CLECs. However, Ms. Pamela Sherwood and Mr. Tim Kagele filed affidavits to demonstrate that Time Warner's commercial experience indicates that these policies and procedures are often not employed.

First, Joint CLECs' opine the quality of service that SBC Ohio provided to CLECs in the year 2000 was woefully inadequate. This poor service quality impacted the ability of CLECs to compete. Despite SBC Ohio's claims of improved service, Time Warner witness es Mr. Kagele and Ms. Sherwood provide several examples of SBC Ohio's poor service, including four informal complaints filed against Time Warner due to SBC Ohio's alleged inadequate facilities and the extremely long intervals required to restore service. As a result of these problems, Time Warner submits that a CLEC begins its relationship with a new customer under the taint of bad service (Joint CLECs' Initial Comments of September 20, 2001, at 14, 15). Also, contrary to the outline of a thorough and efficient account management structure contained in the initial affidavit of SBC Ohio witness Regan, Time Warner represents that it has been assigned four different SBC Ohio local account managers over the past year alone. This lack of continuity creates significant problems and hardships for CLECs in managing their day-to-day relationship with SBC Ohio (*Id.* at 18).

Similarly, Mr. Finefrock and Mr. Doug Reid filed affidavits on behalf of Joint CLECs outlining the problems experienced by LMDI with SBC Michigan regarding quality of service issues pertaining to SBC's UNE-P and resale products. Joint CLECs believe that the described difficulties can be analogized to Ohio (Finefrock Initial Affidavit of September 20, 2001, at 3-9).

Joint CLECs also represent that prior to considering SBC Ohio's compliance with Checklist Item 2, the PUCO should establish performance measurements for special access service in order to prevent SBC Ohio from further degrading the level of service quality it provides for special access and in order to demonstrate parity for the performance measurements associated with its provisioning of EELs combinations. Although SBC Ohio claims that performance measures and standards are in place in order to monitor and assure that SBC Ohio provides quality service, Joint CLECs allege that SBC Ohio refuses to agree to performance measures that would monitor and assure SBC Ohio provides quality of service to CLECs who purchase special access services (Joint CLECs' Initial Comments at 16, 17). Mr. Kagele states that CLECs rely on special access services, rather than on UNE high capacity circuits, due to the greater availability of special access services and reliability in the ordering process, even though they pay a premium over the prices paid for equivalent unbundled services (Kagele Initial Affidavit of September 20, 2001, at 5).

Joint CLECs point out that delays in provisioning special access services, like delays in provisioning UNEs and resale services, are particularly harmful in the large business market segment. Joint CLECs note that SBC Ohio offers only two tariff remedies that address its failure to timely install and repair special access high capacity circuits (*Id.* at 6).

(b) Combinations of UNEs

It is the Joint CLECs' position that SBC Ohio's Oh2A amendment unduly restricts UNE combinations and, therefore, it should be revamped to remove a

number of the proposed restrictions on UNE combinations that are clearly discriminatory and based on a strained and illogical reading of the 1996 Act. Joint CLECs note that SBC Ohio has created the distinction between "new" and "currently combined" combinations based on the language in Eighth Circuit Court's decision in *Iowa Utilities Board v. FCC*[52] (Joint CLECs' Initial Comments at 20). As long as SBC Ohio is allowed to distinguish between "new" and "currently combined" combinations in the manner reflected in the Oh2A, Joint CLECs believe that obtaining UNE-P facilities from SBC Ohio in a nondiscriminatory fashion will be impossible.

The Joint CLECs opine that by "voluntarily" agreeing to provide "new" combinations, SBC Ohio is essentially choosing where and when it will begin to comply with the law. For example, Joint CLECs object to the provision in SBC Ohio's Oh2A agreement that provides that SBC Ohio can choose not to provide CLECs with new combinations of UNEs in central offices in which at least four CLECs have collocated (*Id.* at 23, 24).

Joint CLECs state that SBC Ohio does not allow CLECs to purchase SBC Ohio's voice mail feature in conjunction with SBC Ohio's UNE-P. Joint CLECs point out that, although voice mail is an unregulated service, it is an important feature for customers, and if CLECs cannot make it available as part of a UNE-P offering, the potential customer base for CLECs is drastically reduced. Joint CLECs aver that it is discriminatory for SBC Ohio to offer voice mail as part of the higher cost resale service, but not provide the feature with UNE-P, despite the lack of a technical

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52 *Iowa Utilities Board v. FCC*, 219 F.3d 744, 759 (8th Cir., 2000).

reason for doing so. In addition, Joint CLECs represent that SBC Ohio will not allow CLECs access to the switch features that would allow CLECs to provide voice mail with "stutter dial tone" and/or lamp indicators that would permit CLECs to use their own voice mail platform in combination with a UNE-P offering (*Id.* at 25, 26).

Joint CLECs contend that SBC Ohio has failed to comply with Checklist Item 2, as well as Checklist Item 5, inasmuch as it does not currently provide nondiscriminatory access to shared transport. Specifically, Joint CLECs claim that SBC Ohio refuses to allow CLECs full access to the routing tables necessary to route intraLATA toll traffic in the same manner that SBC Ohio routes its own traffic. CoreComm asserts that such a result is contrary to the applicable FCC's rules. Joint CLECs reference SBC Ohio's acknowledgement that it will "allow" CLECs to use its shared transport to route intraLATA toll traffic to its end destination, but only under the terms of the Oh2A. CoreComm believes that the restrictive references to Oh2A amendment is problematic and ambiguous (*Id.* at 27, 28).

With respect to EELs, Joint CLECs assert that SBC Ohio refuses to allow EELs to be utilized for most purposes that the CLECs might desire. Accordingly, Joint CLECs urges the PUCO to take the following actions as a condition of Section 271 approval: (1) find that an ordinary DS1 configuration is an existing combination; (2) find that the existing SBC Ohio nonrecurring charges for EELs are non-TELRIC based, and reduce them down to $50.00 (the price which SBC Ohio charges under its special access tariffs); (3) find that a CLEC may use an EEL for any purpose, including local dial tone, frame relay, ATM, high-speed internet access, and long distance access; (4) remove the restriction that an EEL is not allowed to be connected to the company's tariffed services; (5) make special access services available under

total service long run incremental cost (TSLRIC) pricing; and (6) eliminate SBC Ohio's ability to decertify any particular EELs circuit that a CLEC has activated and convert it back to the higher special access pricing whenever, in SBC Ohio's sole judgment, the circuit does not qualify for EELs pricing (Finefrock Initial Affidavit at 24, 25).

(c) Nondiscriminatory Access to OSS

Time Warner states is has experienced numerous problems with SBC Ohio, including those related to:

(1) Obtaining service from SBC Ohio that negatively impacts its relationship with end users.

(2) Obtaining timely CSRs in accordance with agreements reached in mediation with SBC Ohio in 1999.

(3) SBC Ohio's compliance with its commitment to ensure experienced and qualified SBC Ohio personnel in order to interface with it as agreed to in 98-1082.

(Sherwood Initial Affidavit at 2).

Time Warner discusses SBC Ohio's poor quality of service and how it affects its end users (*Id.* at 4-6). The company states at least four of its customers have raised informal complaints with the PUCO related to issues problems stemming from SBC Ohio's special access service (*Id.*). Time Warner represents that it has held several meetings with SBC Ohio in an attempt to resolve the following quality of service issues:

(1) The long duration that passes between when the problem is handed off to the central office for dispatch and the time the outside technician is dispatched.

(2) Closing trouble tickets without notifying Time Warner that the trouble has been resolved so that Time Warner can properly verify the restoration of service.

(3) Chronic troubles and repeated troubles that SBC Ohio does not recognize as requiring additional testing or trouble shooting.

(4) Long hold times when Time Warner calls for status updates.

(*Id.* at 6).

In addition, Time Warner represents that SBC Ohio had agreed to provide it with CSRs within 24 hours of receiving a faxed request (*Id.* at 7). According to Time Warner, SBC Ohio has exceeded the 24-hour benchmark, and SBC Ohio's performance in this area fluctuates based on SBC Ohio staffing levels. Time Warner requests that the PUCO investigate SBC Ohio's compliance with its interconnection agreements, including whether processes and procedures are in place, and how those processes are communicated to employees (*Id.* at 7).

Time Warner also alleges that SBC Ohio has failed to satisfy specific service-related merger commitments in 98-1082. Specifically, Time Warner focuses on the commitment not to reduce SBC Ohio's staffing levels of experienced and qualified staff dedicated and empowered to provide CLEC service, including not reducing Ohio-based personnel for four years following the merger closing date (*Id.* at 8).[53]

Time Warner requests that the PUCO investigate and review the above issues prior to concluding that SBC Ohio satisfies the Section 271 checklist (*Id.* at 7).

In light of the commonality of the OSS in the SBC Ameritech states, LDMI analogizes its experiences in Michigan in order to draw specific conclusions relative to SBC Ohio's OSS. LDMI is concerned about SBC Ohio's problems related to flow-through orders (Finefrock Initial Affidavit at 9). Specifically, LDMI reports that, for a designated time frame prior to the filing of its initial comments, only 42 percent of its orders flowed-through with no manual intervention (*Id.* at 10). LDMI is not satisfied

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53 Merger Commitment, IV(C) at 9 of Stipulation and Recommendation filed on February 23, 1999, Case No. 98-1082-TP-AMT.

with SBC Ohio's communications or its efforts to resolve its flow-through problem (*Id.* at 9-18).

LDMI states that customers have been disconnected upon migration to UNE-P (Reid Initial Affidavit of September 20, 2001, at 9). LDMI attributes these disconnections to SBC Michigan's internal mistakes, resulting in inconvenience to LDMI's customer and costing LDMI revenue (*Id.*). LDMI reports that it regularly has difficulty with SBC Michigan's electronic OSS maintenance and repair interfaces. For June 2001, LDMI estimated that, on average, it took approximately over 105 hours to resolve a trouble ticket (*Id.* at 3). In particular, LDMI points out that, on a typical day at the time of its comments, there were 80 open trouble tickets with SBC Michigan related to conversion issues and similar problems (*Id*. at 12).

C. Reply Comments/Affidavits

1. SBC' Ohio's Reply Comments/Affidavits

(a) General Access to UNEs

It is SBC Ohio's position that the CLECs in their comments attack the three-phase procedure adopted by the PUCO in its Entry of June 1, 2000, in this case, contending that an analysis of "what is provided" under Phase II is impossible until Phase III (the OSS test and performance analysis) is complete.[54] SBC Ohio asserts that the issue in this phase of the proceeding centers on SBC Ohio's provisioning

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54 As discussed *supra*, the PUCO previously adopted the concept of the three-phased approach in this proceeding, including: (1) Phase I – a third-party test of SBC Ohio's OSS; (2) Phase II – a review of SBC Ohio's checklist compliance, and (3) Phase III – a review of the third-pary test report and performance results.

relative to the checklist items, and whether those offerings are sufficient to meet the checklist requirements. SBC Ohio opines that several CLECs improperly ask the PUCO to create new obligations for SBC Ohio or to award the CLECs some new affirmative form of relief (e.g., WorldCom asks the PUCO to develop a whole new set of performance measures for FCC-tariffed interstate "special access" services; and AT&T suggests that the PUCO should separate SBC Ohio into two distinct companies - one wholesale and one retail). It is SBC Ohio's position that this proceeding is not a contested case or rulemaking but, rather, it is premised on an informational filing in order to assist the PUCO in fulfilling its consultative role under Section 271 of the 1996 Act (SBC Ohio Reply Comments at 2-10). SBC Ohio believes that there is no real challenge to its offerings of access to stand-alone UNEs (*Id.* at 20).

As to Time Warner's allegations that SBC Ohio "fails to provide CLEC support," SBC Ohio witness Regan responds that in October 2000, SBC Ohio experienced a reorganization of the account management structure, which resulted in the problems that have been raised by Time Warner. SBC Ohio responds that these problems have been addressed and Time Warner was assigned a very experienced and responsive account manager. Further, to avoid similar issues like this on a going-forward basis, SBC Ohio represents that the existing director will notify the customer before a change to the account management team is made (Regan Reply Affidavit at 4, 5). SBC Ohio avers that it takes its account management responsibilities very serious and is committed to improving the support provided to CLEC customers. Accordingly, SBC Ohio developed and implemented a new training program for account managers. SBC Ohio believes that this training ensures that account managers are fully trained. The account management

certification program focuses on five key areas: (1) account management, (2) sales, (3) account planning, (4) service and project management, and (5) negotiation and dispute resolution. Certification is achieved upon the successful completion of 160 hours of course work (*Id*.).

Contrary to AT&T's claim that competition in Ohio is declining at an alarming rate,[55] SBC Ohio posits that data from August 2001 indicates that facilities-based competition in Ohio is increasing at a steady rate. SBC Ohio represents that, since June 2001 the number of stand-alone UNE loops provisioned increased by 2 percent, and the number of UNE-P combinations provisioned to the CLECs grew at a significant rate of 29 percent. Based on this data, SBC Ohio believes that it has the highest percentage of business lines lost to competitors when compared to the other SBC states in the Ameritech region (Heritage Reply Affidavit of October 22, 2001, at 8, 9).

(b) Combinations of UNEs

SBC Ohio posits that the objections of some commenters (AT&T, Sprint, Joint CLECs, and WorldCom) miss the mark and overlook prior PUCO rulings, as well as controlling decisions by the courts and FCC. As to the "existing UNE combinations," it is SBC Ohio opines that it provides existing UNE combinations in full compliance with 47 C.F.R. 51.315(b) and provides several options by which CLECs can combine UNEs for themselves, including both collocation and noncollocation options. SBC Ohio asserts that the UNE-combining methods offered by SBC Ohio have already been determined by the FCC to satisfy the 1996 Act and Section 271 of the 1996 Act

(*Texas 271 Order* at ¶ 216; Kansas/Oklahoma Order[56] at ¶¶171-72). According to SBC Ohio, the CLEC comments merely rehash arguments that have already been rejected by this PUCO in our *October 4th Order* determination that an SBC Ohio tariff fully allows CLECs to combine UNEs. As further support for its position, SBC Ohio references the PUCO's determination in 00-1188 (June 21, 2001 Arbitration Award, at 15; and October 16, 2001, Entry on Rehearing at 5) regarding UNE combinations whereby SBC Oho states that the PUCO reaffirmed its *October 4th Order* (*Id.* at 21, 22).

As to the "new UNE combinations," it is SBC Ohio's opinion that its offerings under the Oh2A mirror the offerings in other x2A agreements that have been deemed by the FCC and state commissions as satisfying (or exceeding) the 1996 Act and the Section 271 checklist. SBC Ohio points out that the CLECs continue to argue for "unrestricted" access to UNE combinations and to ignore the difference between existing and new combinations (*Id.* 22, 23).

As to the EELs combination, it is SBC Ohio's position that NuVox devotes the entirety of its comments to complaints about SBC Ohio's performance in provisioning EELs combinations, which SBC Ohio believes are not part of this phase of the proceeding. Notwithstanding this point, SBC Ohio represents that it has already modified its procedures to address the issue described by NuVox (*Id.* 26). SBC Ohio states that it has been processing CLEC conversion orders without disconnection since the procedures were modified and that SBC Ohio is ready to

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55 AT&T Comments at 6.

56 *In the Matter of the Joint Application of SBC Communications Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications Services, Inc., dba Southwestern Bell Long Distance for*

process orders for the conversion of special access to EELs combinations without disconnection in order to allow CLECs obtain the UNE rates that they are entitled to receive (Brown Reply Affidavit of October 22, 2001, at 20, 21).

SBC Ohio responds to Joint CLECs' complaint that SBC Ohio only offers stutter dial tone and other features associated with voice mail in conjunction with resale and at a higher price than what should be available via UNE-P. SBC Ohio witness Alexander states that any CLEC or third-party voice mail platform can interface with SBC Ohio's central office switches in the exact same manner as SBC Ohio's retail voice mail platforms, and obtain identical functionality, including "stutter dial tone." SBC Alexander explains that when a CLEC purchases unbundled local switching it obtains access to the feature known as message waiting indicator, which enables the port to indicate a stutter dial tone or activate a lamp indicator. The CLEC would order this feature by submitting an LSR. In addition, SBC Ohio represents that a number of CLECs are self-provisioning their own voice mail services and platforms using the very same services as used by SBC Ohio voice mail platforms.

SBC Ohio also indicates that it offers CLECs an optional voice mail service pursuant to contracts. Although Joint CLECs and CoreComm admit that SBC Ohio has made such an offer available, they take issue with certain aspects of that offer, including its pricing. However, SBC Ohio points out that several CLECs have signed optional voice mail contracts containing the same rates and provisions that Joint CLECs and CoreComm find unreasonable. While SBC Ohio is willing to negotiate

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Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and

voice mail contractual pricing arrangements with CLECs, it believes that such negotiations must be considered as unregulated and not subject to Sections 251, 252, or 271 of the 1996 Act. Finally, SBC Ohio states that this PUCO, in its *October 4th Order*, held that voice mail is not a telecommunications service, it is not a UNE, and it is not regulated (Alexander Reply Affidavit of May 6, 2003, at 29, 30).

SBC Ohio also addresses WorldCom's argument that the Oh2A amendment should not be considered by the PUCO as demonstration of compliance with the checklist requirement to provide nondiscriminatory access to UNE combinations until the PUCO first resolves issues in 96-922 and then allows sufficient time for carriers to actually begin providing service. First, SBC Ohio points out that, while it is requesting the PUCO to approve the Oh2A at this time, the PUCO's overall review of SBC Ohio's checklist compliance remains subject to the outcome of the OSS test and actual performance. Second, SBC Ohio states that the PUCO's *October 4th Order* resolved the product scope and pricing issues related to existing UNE-P, which will allow CLECs to gain additional commercial experience, as well as to enable the PUCO to obtain the results of SBC Ohio's comprehensive OSS testing. As to Joint CLECs' claim that SBC Ohio's Oh2A proposal is not compliant with the requirements of Section 271 of the 1996 Act, SBC Ohio argues that its Oh2A's terms and conditions relating to UNE combinations are substantially the same as those that the FCC has previously approved (Alexander Reply Affidavit at 12, 13).

As to CoreComm's claim that SBC Ohio will only provide UNE-P for existing combinations (where the current customer is receiving SBC Ohio dial tone), SBC

Order, FCC 01-29, 16 FCC Rcd. 6237 (2001) (*Kansas/Oklahoma Order*).

Ohio represents that it provides UNE-P conversion for existing resale or other CLEC existing UNE-P as well. As to the reasonableness of the nonrecurring charge for the UNE-P, SBC Ohio asserts that the PUCO, in its *October 4th Order*, established a nonrecurring charge of $0.74 for existing UNE-P migrations and activations. According to SBC Ohio, it will take appropriate measures to implement the PUCO's directive and will modify the Oh2A to conform to the *October 4th Order* (*Id.* at 18). As to CoreComm's claim that SBC Ohio charges for Caller ID as part of UNE-P, SBC Ohio believes that such a claim is unfounded because when a CLEC purchases unbundled local switching, it obtains all the features in the central office switch, including Caller ID (where available), and it is up to CoreComm to specify which features SBC Ohio provisions on the ULS switch port.

As to CoreComm's claim that it must first provision lines via resale when converting a customer's service to a new UNE-P combination, SBC Ohio states that it is fulfilling its obligations under the 1996 Act, the FCC's rules, and the PUCO's directives. Further, SBC Ohio disputes CoreComm's allegation that it is not providing resold services for new lines. SBC Ohio represents that it provides resale at parity with its retail services. Finally, SBC Ohio states that CoreComm wrongly alleges that SBC Ohio has no "business rules" in place to accept UNE-P orders, as UNE-P ordering information has been posted on the CLEC website for well over a year (*Id.* at 18, 19).

As to CoreComm claims that SBC Ohio's UNE-P product improperly routes certain local and local plus traffic as long distance traffic, SBC Ohio argues that it researched trouble tickets generated by CoreComm as far back as March 2001 and has not been able to substantiate the claim that SBC Ohio was routing local or local

plus calls as long distance calls. SBC Ohio did identify a number of trouble reports generated for various calling problems such as "can't call LD", "can't call certain exchanges" and recorded announcements which were reported in February and March 2001, and found that a translation change that was made to correct other problems when a line was converted to UNE-P had an unanticipated effect. SBC Ohio states that it identified the cause of the original problems and reversed the translation change on all CLEC lines. SBC Ohio reports that there have been no trouble reports of a similar nature since April 2001 (Deere Reply Affidavit at 13).

As to LDMI's claim that it has not has not signed the Mi2A interconnection agreement, and will not sign the Oh2A, because of "restrictions" related to EELs and new UNE-P combinations, SBC Ohio witness Alexander states that a CLEC need not sign the Oh2A to request the conversion of existing special access arrangements to EELs combination, where such circuits meet the criteria under the FCC's *Supplemental Order Clarification*. Such conversions are available under the procedures posted on SBC Ohio's CLEC website. The Oh2A requires that a new EEL purchased by the CLEC must meet the criteria for a significant amount of local exchange service, as specified in the FCC's *Supplemental Order Clarification* (*Id.* at 20).

As to Time Warner's statement that some CLECs purchase special access rather than UNEs because they prefer to submit an ASR for special access, SBC Ohio witness Alexander states that it is apparent that the CLEC has made a business decision as to whether to order a UNE or a special access service, and there is nothing preventing CLECs from ordering UNEs where the UNE is available for the requested CLEC application. However, SBC Ohio asserts that no persuasive arguments have been made to support the creation of a new "class" of UNEs through

the re-pricing of special access at TELRIC. As to Time Warner's request that SBC Ohio be required to "commingle" or combine EELs with tariffed special access services, SBC Ohio argues that granting this request would expand SBC Ohio's unbundling obligations beyond those mandated by federal rules, bypass the FCC's "impair" test, and should be rejected by the PUCO. Further SBC Ohio notes that, as of the filing of its comments, this issue remained open before the FCC and is currently being addressed in CC Docket 96-98[57] (*Id.* at 21, 22).

As to LDMI's request to reduce nonrecurring charges for EELs to $50, SBC Ohio argues that it is unreasonable, and would require the PUCO and SBC Ohio to establish rates that are far below TELRIC and, therefore, contrary to the 1996 Act. SBC Ohio states that there is no basis for the PUCO to reprice special access at "TSLRIC", as recommended by LDMI, because the pricing, terms and conditions for special access services are clearly outside the scope of this proceeding (*Id.* 23, 24).

SBC Ohio argues that CoreComm allegations are premature regarding SBC Ohio's noncompliance with Checklist Item 2 due to its alleged inability to provide CoreComm DUF on a consistent basis. SBC Ohio contends that the issue of its actual provisioning of DUF will be addressed in Phase III of this proceeding when actual performance results, including billing (Performance Measure 19), are reviewed. SBC Ohio believes that the prior difficulties in connection with CoreComm's receipt of DUF can be attributed to capacity limitations on CoreComm's server (Kagan Reply Affidavit of October 22, 2001, at 7, 8).

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57 FCC Public Notice; Comments Sought on the Use of Unbundled Network Elements to Provide

(c) UNE Pricing

SBC Ohio addresses the CLECs' claim that SBC Ohio does not have valid TELRIC-based rates in effect for a number of UNEs, and that consideration of checklist compliance is premature. First, it is SBC Ohio's position that a number of the CLECs' claims have been addressed or resolved by the PUCO's *October 4th Order*, which established rates for UNE-P, ULS-ST, and custom routing for OS/DA. In addition, SBC Ohio states that, as of the time of the filing of its comments, the PUCO was considering TELRIC rates for line sharing, loop conditioning, shared and cageless collocation, sub-loops, DS3 loops, and dark fiber (SBC Ohio Reply Comments at 27, 28).

With respect to AT&T's claim that no TELRIC studies have been prepared for EELs, line splitting and broadband service, SBC Ohio references the PUCO's arbitration award in 00-1188, in which the PUCO determined that SBC Ohio is not required to offer line splitting as demanded by AT&T (June 21, 2001 Arbitration Award, Case No. 00-1188-TP-ARB, at 34). SBC Ohio also references the PUCO's February 24, 2000, arbitration award in Case No. 99-1153-TP-ARB, *In the Matter of the of ICG Telecom Group Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements With Ameritech Ohio*, as well as the *October 4th Order* in support of its position that it is under no legal obligation to offer new EELS.

SBC Ohio dismisses AT&T's claim that its PUCO approved TELRIC prices are no longer relevant since they are based on 1996 data and cost models. Despite AT&T's assumption that new studies would result in lower rates, SBC Ohio submits

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Exchange Access Services, CC Docket No. 96-98, Released January 24, 2001.

that costs can increase or decrease over time and that new studies do not automatically signify lower rates (Currie Reply Affidavit of October 22, 2001, at 3, 4). SBC Ohio also provides that AT&T overlooks the fact that the original TELRIC studies are not as old as AT&T portrays them to be, inasmuch as they were approved by the PUCO and became effective in June, 1999. SBC Ohio argues that there has been no demonstration that the current PUCO-approved TELRIC rates are unreasonable. In particular, SBC Ohio highlights that it has some of the lowest TELRIC UNE rates in the country, including its rates for unbundled loops (SBC Ohio Reply Comments at 28, 29).

As to AT&T's claim that SBC Ohio's switching studies are out of date due to SBC Ohio's decision to abandon the use of SCIS in favor of newer models, SBC Ohio submits that AT&T fails to distinguish between the reasonableness of the approved compliance switching cost estimates that were derived from SCIS and the development of new switching cost models. SBC Ohio notes that the PUCO, in our *October 4th Order*, has decided this issue with respect to SBC Ohio's ULS port rate. SBC Ohio concludes that the PUCO effectively determined that the ULS port rate, which was developed using SCIS, as originally approved in 1999, is still reasonable (Currie Reply Affidavit at 4, 5). Similarly, Dr. Currie states that AT&T fails to establish that the unbundled loop costs approved by the PUCO, which were derived from the Ameritech facilities analysis model (AFAM), are now out of date simply because SBC Ohio has engaged in the process of improving and updating loop models over time (*Id.*).

As to AT&T's claim that SBC Ohio's nonrecurring studies are out of date, Dr. Currie notes that this claim focuses on service order costs associated with SBC Ohio's

UNE-P offering. SBC Ohio asserts that the PUCO has also addressed these costs in its *October 4th Order*, established a rate for UNE-P service orders, and recognized that OSS costs associated with UNE-P service orders still need to be developed. As to AT&T's claim that SBC Ohio's shared and common costs are largely obsolete and overstated, SBC Ohio considers its approved compliance shared and common cost factors to still be reasonable for SBC Ohio (*Id.* 6, 7).

(d) Nondiscriminatory Access to OSS

As a general reply to the commentors' statements regarding the commercial viability of SBC Ohio's OSS, SBC Ohio states that it is premature to speculate on its OSS performance and CLECs' access, until the BearingPoint OSS audit is complete (Cottrell Reply Affidavit of October 22, 2001, at 3).

In regard to pre-2001 OSS enhancements, SBC Ohio states that, since 1996, it has been constantly and significantly enhancing its OSS interfaces (*Id.* at 5). SBC Ohio represents that CLECs have been able to participate in the development of SBC Ohio's LSOG and associated interfaces through SBC Ohio's change management process. SBC Ohio purports that it has implemented OSS support for the ordering and preordering functionalities consistent with existing industry guidelines and, in many instances, implemented these modifications in advance of the issuance of the industry guidelines[58] (*Id.* at 6, 7).

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[58] For example, SBC Ohio contends CLECs were able to order resale DS1s electronically from SBC Ohio before industry guidelines for DS1 ordering were issued.

SBC Ohio states that, contrary to AT&T's comments, the agreed-to A-AA ordering and pre-ordering enhancements[59] have already been implemented (*Id.* at 7). Most of the enhancements were made prior to, or as part of, the March 2001 LSOG 4 release, and the last one, the directory listings ordering enhancement, was included in the June 2001 LSOG 4 release (*Id.*). SBC Ohio states that the LSOG 5 release is not germane to the consideration of SBC Ohio's compliance with Sections 251 and 271 of the 1996 Act, inasmuch as all the functionalities that were to be implemented in the third-party OSS test were included in LSOG 4. SBC Ohio submits that the LSOG 5 release simply brings an additional degree of uniformity to the interfaces of the multiple regional companies within SBC (*Id.* at 7, 8).

In response to AT&T's desire to conduct its own test of SBC Ohio's OSS, SBC Ohio states it is concerned about the potential implications and possible adverse impacts on the BearingPoint OSS audit, other CLECs, and SBC Ohio's retail customers (*Id.* at 9).

SBC Ohio believes that AT&T's characterization of SBC Ohio's implementation of LSOG 4 is both incorrect and premature. SBC Ohio points out that each of the implementation issues brought forth by AT&T will be evaluated by BearingPoint (*Id.* at 12). SBC Ohio represents that it followed the change management process during the implementation of the March 2001 LSOG 4 release, and that any CLEC could have requested a vote on whether the release should proceed if they had a concern with the finalization of the release requirements or its implementation (*Id.* at 15).

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59 The "A-AA" OSS enhancements resulted from the multistate OSS collaboratives that

In response to connectivity issues raised by AT&T relative to the Ameritech remote access facility (ARAF) and common object broker architecture (CORBA), SBC Ohio attributes AT&T's difficulties to failure to follow SBC Ohio's documented CLEC OSS interconnection procedures (*Id.*). SBC Ohio states its CLEC OSS interconnection procedures documentation, located on the CLEC online website, lists all the pertinent information and the requirements to be met by CLECs prior to the establishment of connectivity (*Id.* at 15-17).

Regarding AT&T's discussion of the flow-through capabilities of SBC Ohio's OSS, SBC Ohio states it has completely complied with the flow-through planning steps outlined in the January 16, 2001, Third Joint Progress Report and that SBC Ohio's flow-through capabilities will be evaluated in the BearingPoint OSS audit (*Id.* at 20). SBC Ohio confirms WorldCom's observations that orders dealing with accounts that have contracts do not flow-through (*Id.*). SBC Ohio states these orders are reported as not having flowed through in SBC Ohio's performance measurement regarding flow-through (*Id.*). Further, SBC Ohio states it is working with all CLECs on cooperatively planning flow-through enhancements as part of its OSS change management meetings, and that WorldCom's requested enhancement to flow-through UNE-P migration orders that have retail call packs was scheduled for the second quarter of 2002 (*Id.* at 21).

In reply to WorldCom's assertions that SBC Ohio's reliance on the manual handling of nonflow-through orders has led to a deteriorating and inconsistent backlog of missing notifiers, SBC Ohio believes that WorldCom's contention is

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commenced subsequent to the SBC/Ameritech merger proceeding in 98-1082.

misleading (Brown Reply Affidavit at 9, 10). SBC Ohio acknowledges that individual manual processing issues arise due to inadvertent errors, but should rarely occur (*Id.* at 9). SBC Ohio points out that the mechanized customer production support center (MCPSC) and an assigned SBC Ohio OSS manager are available for CLECs to report OSS problems. Further, in response to WorldCom's implications that SBC Ohio is unresponsive to CLECs' OSS problems, SBC Ohio states that its account team worked closely with WorldCom over the course of a lengthy investigation to resolve WorldCom's difficulties (*Id.* at 10).

In response to WorldCom's allegations that SBC Ohio's LSC lacks the capabilities to handle the volume and complexities of WorldCom's requests, SBC Ohio states that the LSC analyzes CLEC order activity on a daily and weekly basis to identify trends and prepare for increases in order volume (*Id.* at 10, 11). To conduct this analysis, SBC Ohio uses a regional model that uses regional data from the five SBC Ohio states to adjust the LSC staffing needs according to forecasted demand (*Id.* at 11).

SBC Ohio responds to specific issues raised by WorldCom. In regard to the missing SOC notification issue, SBC Ohio states this issue is really a combination of related issues of lesser magnitude (*Id.* at 22). Although SBC Ohio asserts it has taken the problems reported by WorldCom seriously, it argues that the number of orders in question represents less than half of one percent of the orders WorldCom submitted during July and August 2001 (when the identified problems were occurring) (*Id.* at 22, 23). Also, SBC Ohio states that its SOC performance is being evaluated in the BearingPoint OSS audit (*Id.* at 23). In response the feature provisioning issue raised by WorldCom, SBC Ohio states that AIN-based features are proprietary in nature,

not subject to unbundling, and, therefore, not available in conjunction with UNE-P (*Id.* at 24). Further, SBC Ohio states that although WorldCom complains that SBC Ohio accepts WorldCom orders requesting AIN-based features and does not subsequently provision those features, WorldCom should be aware of the features not available with UNE-P and not request AIN features on its orders (*Id.*).

With respect to WorldCom's complaints about insufficient notice of OSS downtime, SBC Ohio states that its account team, in conjunction with its change management contacts, worked cooperatively with WorldCom to add its representatives to the system outage notification distribution list (*Id.*).

In reply to ASCENT's assertions related to SBC Ohio's maintenance and repair OSS, SBC Ohio states its performance results for PM 39, "Receipt to Clear Duration - POTS," demonstrate that ASCENT has exaggerated the time that SBC Ohio takes to resolve trouble reports (Brown Reply Affidavit at 24). Further, SBC Ohio believes that some of the trouble ASCENT has experienced with SBC Ohio's maintenance and repair systems is due to ASCENT's errors or lack of knowledge related to product specifications.

SBC Ohio disputes the claims of CoreComm and ASCENT that it's technicians intentionally misreport trouble report data by marking trouble resolutions as "no trouble found" (*Id.* at 26). Specifically, SBC Ohio asserts that no CLEC has provided any trouble report numbers, dates, times, or order numbers to support these allegations (*Id.*). Further, SBC Ohio states it is against SBC Ohio's code of business conduct to deliberately misrepresent facts, assets, or records, and that employees that

fail to comply with the code of business conduct are subject to disciplinary action, including dismissal (*Id.*)

In response to Time Warner and AT&T's criticism's of SBC Ohio's account management, SBC Ohio first states it has implemented a new account management certification process for its account managers to ensure they are properly trained and knowledgeable (Regan Reply Affidavit at 3, 4). SBC Ohio also states that it has resolved personnel and process issues specifically identified by Time Warner and AT&T (*Id.* at 4, 5).

In regard to CoreComm and AT&T's claims that SBC Ohio's OSS billing processes and procedures are not as efficient and reliable as represented, SBC Ohio contends that its OSS billing processes and procedures satisfy the necessary requirements, and that these allegations have no merit (Kagan Reply Affidavit of October 22, 2001, at 4). SBC Ohio believes that its UNE-P billing satisfies the industry Ordering and Billing Forum guidelines (*Id.* at 5). Further, SBC Ohio represents that CLECs currently have all the necessary data to audit their UNE-P bills, and that the necessary usage data has been available since October 2000, and will continue to be available (*Id.* at 6, Attachments A, B).

In reply to AT&T's assertions that SBC Ohio's carrier bill verification and audit process is inadequate, SBC Ohio reiterates that SBC Ohio has an internal audit and verification process to ensure accuracy and proper formatting of bills (*Id.* at 7). In addition to it validating each individual bill, SBC Ohio's Bill Validation Group monitors SBC Ohio's billing performance via monthly tests consisting of a sample of 448 actual billed uniform service order codes (USOCs) (*Id.*). Also, SBC Ohio states

that, if AT&T has real concerns with its bills it can seek resolution of its problems in other ways than the SBC Ohio-CLEC collaboratives (*Id.*).

SBC Ohio argues that XO Ohio's comments related to SBC Ohio's flex-test notification process for the provisioning of high capacity UNEs are misleading (Foster Reply Affidavit of October 22, 2001, at 3, 4). Specifically, SBC Ohio states that XO Ohio's criticisms fail to mention that SBC Ohio performs end-to-end testing to ensure the facility is operational prior to notifying the customer that circuit is ready for use, and that SBC Ohio permits XO Ohio a 24 hour window within which to request additional testing without opening a trouble ticket (*Id.*, at 4, 5). SBC Ohio also contends that XO Ohio failed to mention its success using another frequently used order-closing process where SBC Ohio tests directly with XO Ohio prior to closing the order (*Id.* at 5).

In response to WorldCom's allegations regarding the shortage of facilities relative to high capacity network elements, SBC Ohio points out that this claim pertains to special access services instead of UNEs (*Id.* at 7). In reply to XO Ohio and WorldCom's complaints about experiencing hold time of 45-60 minutes when calling the high capacity test center, SBC Ohio states that its automated call distribution (ACD) records indicate otherwise (*Id.* at 8).

Responding to XO Ohio's and WorldCom's claims that SBC Ohio's escalation process is ineffective, SBC Ohio asserts that it takes its escalation process seriously and suggests that the CLECs maintain current escalation contact lists. SBC Ohio believes that compliance with its escalation guidelines will result in timely status

responses (*Id.* at 9). SBC Ohio also represents that it has formed a team to evaluate its escalation procedures on a going-forward basis (*Id.*).

In response to WorldCom's objections regarding those sections of SBC's "13 state" generic interconnection agreement related to intellectual property rights, SBC Ohio responds that the provision that WorldCom is complaining about is contained in several PUCO-approved interconnection agreements. Further, SBC Ohio believes that any disputes regarding intellectual property have now been resolved (Alexander Reply Affidavit at 24).

2. AT&T's Reply Comments/Affidavits

AT&T concludes that all commenters agree that SBC Ohio's Checklist information filing was premature and deficient on its face and should be rejected by the PUCO. AT&T asserts that SBC Ohio must be in present compliance with the 1996 Act, and not merely promise that it will comply. In AT&T's opinion, such a conclusion cannot be reached until the PUCO completes its review of some of SBC Ohio product offerings most essential to development of a competitive market (e.g., UNE-P, line sharing, line splitting, special construction charges, etc.). In addition, AT&T believes that SBC Ohio's OSS that existed at the time of its comments, could not even support the limited competition found in Ohio at that time, much less a fully competitive market. Further, AT&T argues that SBC Ohio's UNE combination policies are unfairly discriminatory and restrict competitive growth (AT&T Reply Comments of October 22, 2001, at 1-3).

3. Sprint's Reply Comments/Affidavits

Sprint agrees with comments of AT&T, WorldCom, and Joint CLECs concluding that SBC Ohio's 271 filing is premature and SBC Ohio is not currently entitled to Section 271 approval. Sprint reiterates its claim that SBC Ohio has failed to comply with Checklist Item 2 because SBC Ohio has refused to allow CLECs access the HFPL on unbundled basis including those that are fiber-fed. Sprint agrees with WorldCom that SBC Ohio has failed to provide the required nondiscriminatory access to the local loop. Sprint states that SBC Ohio must provide line splitting using the UNE-P and must provide line sharing to CLECs on fiber-fed loops. Sprint recommends that prior to granting Section 271 approval, the PUCO must determine, after discovery and an evidentiary hearing, whether SBC Ohio has fully complied with all its legal obligations (Sprint Reply Comments of October 22, 2001, at 1-3).

4. Joint CLECs' Reply Comments/Affidavits

It is the Joint CLECs' position that the initial comments conclusively demonstrate that SBC Ohio's informational filing is deficient on its face and should be dismissed by the PUCO. It is the Joint CLECs' opinion that by the time the results of the BearingPoint third-party OSS test are available, the information contained in SBC Ohio's filing will be stale to the point of uselessness. Accordingly, the Joint CLECs recommend that the PUCO commence its review of SBC Ohio's checklist compliance immediately subsequent to the conclusion of its review of the results of the OSS third-party test and the three months of performance data for all measures (Joint CLECs Reply Comments of October 22, 2001, at 1, 2).

(a) UNE Combinations

Joint CLECs cite to CoreComm's Ohio-specific experiences with untimely receipt of usage information in conjunction with SBC Ohio's UNE-P product, and the problems experienced by LDMI, associated with SBC Michigan's provisioning of its UNE-P product. Because SBC Michigan and SBC Ohio share the same systems, Joint CLECs believe that their situation in Ohio is similar to the experiences of LDMI in Michigan. Specifically, Joint CLECs believe that these experiences demonstrate that SBC Ohio does not provide UNE-P related usage and billing information in a nondiscriminatory and commercially reasonable manner. Joint CLECs claim that a change by SBC Michigan (during August 2001) from the SBC electronic billing system (AEBS) billing format to the carrier access billing system (CABS) format have rendered it impossible for CLECs in Michigan using SBC Michigan's UNE-P product to accurately bill their retail customers. This problem is compounded by the fact that CLECs pay the SBC companies the amount contained in the CABS bill. However, if the CABS bill overstates usage and the DUF records understate usage, LDMI concludes that the CLEC is harmed on two fronts: once when it fails to bill for the actual usage of its customers and again when it is forced to pay the SBC companies for usage not attributable to its customers.

In support of its argument, LDMI references the *Verizon Pennsylvania 271 Order* in which the FCC stated that "we agree with the competitive LECs that the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under Checklist

Item 2.[60] LDMI contends that SBC Michigan has been unresponsive with respect to the CLEC concerns regarding this issue (*Id.* at 3-5).

Another problem experienced by LDMI is the huge information gap of calls and revenues lost between the date when SBC Michigan indicates that it has activated an LMDI customer on UNE-P, and the date when call record data actually begins to register in SBC's daily DUF files that are sent to LDMI (Finefrock Reply Affidavit of October 22, 2001, at 7).

(b) Nondiscriminatory Access to OSS

LDMI also identifies concerns with respect to the magnitude of billing and data collection problems related to SBC Michigan's UNE-P offerings (*Id.* at 1). LDMI contends that SBC Michigan's data is inaccurate resulting in CLECs overpaying SBC Ohio and not receiving sufficient amount of call detail to adequately bill its customers (*Id.* at 2). LDMI is concerned that SBC Ohio's conversion to CABS billing for UNE-P will leave CLECs without a valid way to audit bills for accuracy, resulting in lost revenues and customer dissatisfaction (*Id.* at 5-8).

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60 *In the Matter of the Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, CC Docket No. 01-138 (FCC No. 01-269, September 19, 2001) at 22 (*Pennsylvania 271 Order*).

5. Consumer Entities' Reply Comments/Affidavits

(a) UNE Combinations

Consumers Entities opine that the PUCO should not accept SBC Ohio's claim that the PUCO's *October 4th Order* removes all remaining barriers regarding access to network elements. Although the PUCO did take a positive step toward competition by reducing the UNE-P nonrecurring charge from $111 (charge originally proposed by SBC Ohio) to $0.74, Consumer Entities assert that this step alone is not enough to promote, let alone ensure, open access to SBC Ohio's network. According to Consumer Entities, other equally anticompetitive barriers remain as a result of the PUCO's failure to reduce the ULS-ST monthly recurring basic line port charge from the current interim rate of $4.63 per month. Consumer Entities believe that the anticompetitive nature of this charge is apparent when compared to the same charge that SBC has proposed in other nearby states. Further, Consumer Entities identify the OSS rate element charge and the nonrecurring cost for feature changes as additional barriers to entry.

Consumers Entities reference several of the commenters' specific experiences of how SBC Ohio provisions UNEs and UNE-P. Consumer Entities believe that these experiences speak volumes about whether it is in the public interest to allow SBC Ohio to provide interLATA long-distance service. Finally, Consumers Entities agree with the representations of AT&T, WorldCom, and CoreComm that only through the use of UNE-P can CLECs serve mass market residential customers on a broad basis (Consumer Entities Reply Comments at 13, 14).

D. PUCO's Discussion

1. General Access to UNEs

Checklist Item 2 requires SBC Ohio to demonstrate, pursuant to Section 271(c)(2)(B)(ii) of the 1996 Act, that it offers nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 253(d)(1) of the 1996 Act.

Pursuant to the process established in the our June 1, 2000 Entry, in this case, this section of the report deals with SBC Ohio's informational filing of August 9, 2001, in Phase II of this proceeding, addressing those UNEs offered by SBC Ohio, as well as the terms and a conditions of such UNE offerings. In addition, the BearingPoint OSS audit, discussed in Appendix A of this Report and Evaluation addresses the OSS-related functionalities pertaining to Checklist Item 2.

AT&T and WorldCom contend that "how" SBC Ohio is providing UNEs is an integral part of the Section 271 assessment of "what" SBC Ohio is providing. We agree that "how" a UNE is provisioned is as important in our evaluation as "what" UNEs are provided. The evaluation of "how" SBC Ohio is providing UNEs requires an evaluation of terms and conditions associated with the UNE offering, which we will address in this section of the report, as well as the evaluation of performance measure(s) associated with that UNE, which is addressed in the evaluation of the OSS test results, discussed in Appendix A.

AT&T claims that SBC Ohio has not established final PUCO-approved terms, conditions and pricing for some UNEs, specifically line sharing, line splitting, loop

qualification, and shared and cageless collocation. We note that, subsequent to the filing of comments, SBC Ohio has entered into several PUCO-approved interconnection agreements that include all of these UNEs. Some of these agreements were arbitrated by the PUCO, resulting in the establishment of nondiscriminatory terms and conditions for pertinent UNEs and interconnection.[61] In these agreements interim rates were established, subject to true-up, for these UNEs and interconnection services until the PUCO approves TELRIC-based rates (see pricing section of this Report and Evaluation for discussion of the PUCO's approval of TELRIC-based rates). Accordingly, we determine that SBC Ohio offers line sharing, line splitting, loop qualification, and shared and cageless collocation on nondiscriminatory rates, terms and conditions and consistent with the FCC rules and the PUCO's policies and decisions.

Additionally, as a general evaluation of SBC Ohio's provision of nondiscriminatory access to individual UNEs, we note that, although the issues raised by the USTA decision[62] regarding the FCC's *UNE Remand Order* and the *Line Sharing Order* are not resolved as of yet, SBC Ohio continues to provide access to UNEs pursuant to the FCC's *UNE Remand Order* and the *Line Sharing Order*. Rates, terms, and conditions for such UNEs are set by the PUCO in various arbitration proceedings.[63]

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61 See e.g., interconnection agreement approved on April 24, 2003, in 00-1188 and the interconnection agreement approved on February 13, 2003, in 01-1319.

62 *United States Telecom Association, et al., v. FCC et al.*, (290 F.3d 415 D.C. Circuit, May 4, 2002) (*USTA* decision).

63 See e.g., interconnection agreement approved on April 24, 2003, in 00-1188 and the interconnection agreement approved on February 13, 2003, in 01-1319.

Next, we address Sprint's claim that SBC Ohio fails to satisfy the Checklist Item 2 requirements due to its refusal to allow CLECs access to the HFPL for all loops, including fiber-fed loops in SBC Ohio's Project Pronto. This issue has been addressed by the PUCO in 01-1319. In that arbitration, the PUCO adopted the arbitration panel's conclusion that SBC Ohio does not limit the CLECs' access to the HFPL UNE, where there is fiber deployed in the loop, since SBC Ohio allows the CLECs to collocate a DSLAM at the remote terminal and then lease access to dark fiber or unbundled sub-loop element from the remote terminal to the central office.[64]

Joint CLECs raise three concerns with SBC Ohio's offering of access to UNEs. First, Time Warner points to the poor quality of service SBC Ohio has provided to CLECs, based on the experiences of 2000. Specifically, Time Warner identified examples of faulty facilities and extremely long intervals for restoring service (Joint CLECs Initial Comments at 14, 15). We note that this issue is discussed in the BearingPoint OSS audit results addressed in Appendix A of this Report and Evaluation. Second, Time Warner raises the issue that SBC Ohio assigned four local account mangers to Time Warner within one year (*Id.* at 18). We note that the record reflects that SBC Ohio had a reorganization of its account management structure in October 2000, which resulted in this problem for Time Warner. The record also reflects that SBC Ohio has implemented the following new policies: (1) the existing director notifies the customer before a change to the account management team is made; and (2) SBC Ohio developed and implemented a new training program for account managers (account management certification program) that requires the successful completion of 160 hours of course work (Regan Reply Affidavit at 4, 5)

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64 01-1319 Panel Report at 69.

Accordingly, it appears as though SBC Ohio has taken corrective measures to address Time Warner's concerns. Third, the Joint CLECs suggest that prior to considering SBC Ohio's compliance with Checklist Item 2, the PUCO should establish performance measurements for special access service. We note that, in this proceeding, we are investigating and developing a recommendation regarding SBC Ohio's compliance with Section 271 requirements, including all checklist items. The PUCO is not engaged in an evaluation of other tariff offerings that have their own terms and conditions and are not included as part of Section 271 of the 1996 Act. Accordingly, we believe that it is not appropriate to address this issue within the Section 271 proceeding.

The most recent data the PUCO can consider is obtained from SBC Ohio's "Year 2002 Competition Report Using the Diagnostic Method For Assessing Competition" filed with the PUCO on March 31, 2003 pursuant to Section XII of the stipulation and recommendation in 98-1082. SBC Ohio reports that as of September 30, 2002, competitors provide service to approximately 559,000 residential lines (19 percent share) and 221,000 business lines (18 percent share) (Executive Summary at 2). Out of these lines, the competitors offer service to customers using 316,000 UNE-P combinations and 120,000 unbundled local loops (*Id.* at 15).

2. Combinations of UNEs

Almost all commenting entities argue that the offering of nondiscriminatory UNE combinations (i.e., UNE-P) is essential to broad scale entry into residential markets. Accordingly, most of the issues raised regarding Checklist Item 2 concern UNE combinations. We note that since the filing of comments and reply comments

in this proceeding, the PUCO has addressed issues raised regarding SBC Ohio's offering of UNE combinations within this proceeding, as well as in other proceedings. In this section we will evaluate SBC Ohio's general offering of new and existing UNE combinations, with specific attention to UNE-P combinations and EELs combinations, and address issues and concerns raised by commenters regarding SBC Ohio's UNE-P and EELs combination offerings.

3. UNE-P Combinations

The UNE-P is a combination of unbundled loop, local switching, and shared transport. The first issue raised by AT&T and WorldCom is that SBC Ohio has failed to establish final, PUCO-approved terms, conditions, and pricing for its UNE-P offering. Regarding the UNE-P pricing, the PUCO, in 96-922, has previously established: (1) permanent TELRIC-based recurring rates for UNEs comprising SBC Ohio's UNE-P offering in existence as of June 1999, (2) a permanent nonrecurring charge of $0.74 for SBC Ohio's existing UNE-P combinations pursuant to the *October 4th Order*; and (3) an interim nonrecurring charge for SBC Ohio's new UNE-P combinations for residential customers of $33.88, pursuant to the PUCO's Entry of July 11, 2002.

As to the terms and conditions associated with SBC Ohio's UNE-P offering, the PUCO established such terms and conditions in various Orders. In its *October 4th Order*, issued prior to the *Verizon* decision, the PUCO has defined what constitutes an "existing UNE-P combination" and its associated terms and conditions. On March 13, 2003, the PUCO issued an Entry (*March 13th Entry*) in the instant proceeding resolving disputes raised by interested entities regarding the rates, terms and

conditions proposed by SBC Ohio in its October 4, 2002, "UNE combinations amendment," filed as part of the Sixth Joint Progress Report. We would note that SBC Ohio and the CLECs participating in this proceeding agree to all terms and conditions for SBC Ohio's general offering of UNE combinations articulated in "UNE combinations amendment," except with respect to the disputed issues addressed by our *March 13th Entry*.

In that Entry, the PUCO affirmed its *October 4th Order* for existing UNE-P combination and resolved new disputes about the applicability of terms and conditions associated with existing UNE-P combination.

In addition, the PUCO resolved disputes about terms and conditions associated with SBC Ohio's offering of new UNE-P combinations. In its "UNE combinations amendment," SBC Ohio offers the following ordinarily combined new UNE-P combinations as a standard offering:

2-wire basic analog loop w/basic line port
2-wire basic analog loop w/basic line port
2-wire basic analog loop w/analog DID trunk port
2-Wire basic analog loop w/Centrex basic line port
2-wire electronic key line analog loop with Centrex EKL line port
2-wire 160kbps [integrated services digital network (ISDN-BRI) digital loop with ISDN direct line port]
2-wire 160kbps (ISDN-BRI) digital loop with Centrex ISDN line port
4-wire digital (loop) with digital trunking trunk port

4-wire digital loop with ULS DS1 trunk port
4-wire digital loop with ISDN prime trunk port

In its "UNE combinations amendment", SBC Ohio offers CLECs the opportunity to obtain new UNE-P combinations that are ordinarily combined but not included in the above list through a BFR-OC. The "UNE combinations amendment" includes the detailed BFR-OC process. Also in its "UNE combinations amendment," SBC Ohio offers CLECs the capability to obtain new UNE-P combinations that are not ordinarily combined. This can occur through the use of the agreed upon BFR process in the CLECs respective interconnection agreement. We note that several CLECs had signed interconnection agreement amendments reflecting SBC Ohio's proposed "UNE combinations amendment" as an interim agreement pending the PUCO's *March 13th Entry* (e.g., TCG in Case No. 02-2561-TP-AEC, AT&T in Case No. 02-2562-TP-AEC, CoreComm in Case No. 02-2957-TP-AEC; and MCIm in 01-1319).

As to issues raised by commenters regarding SBC Ohio's proposed Oh2A Amendment, we believe it to be moot due to SBC Ohio's withdrawal of such offering (April 29, 2002) and replacing it with its proposed "UNE combinations amendment" filed on October 4, 2002, which is the basis of our evaluation and recommendation.

Next we address specific implementation issues raised regarding SBC Ohio's offering of the UNE-P combination. Among these issues is CoreComm's argument that SBC Ohio's UNE-P product is not compliant with Checklist Item 2 since SBC Ohio is unable to provide CoreComm with a DUF on a consistent basis (CoreComm's Initial Comments at 28, 29). Also, LMDI states that around August 2001, it experience problems with SBC Michigan regarding the UNE-P related usage and

billing information due to SBC Michigan's conversion from AEBS to CABS billing format (Joint CLECs' Reply Comments at 3-5). On the other hand, SBC Ohio argues that CoreComm's prior difficulties in receiving DUF on consistent basis were due to capacity limitations on CoreComm's server where it received such information. The PUCO notes that it is not clear from the record as to which side of the network (SBC Ohio or CoreComm) is the source of the problem or whether such problems are still outstanding. However, we note that the ultimate determination of this issue has been addressed by SBC Ohio as reflected in the most current BearingPoint Report.

As to CoreComm's argument that SBC Ohio's UNE-P product improperly routes certain local and local plus traffic on certain switches as long distance traffic (CoreComm Initial Comments at 29, 30). SBC Ohio argues that it researched trouble tickets generated by CoreComm as far back as March 2001, and has not been able to substantiate its claim. We note that CoreComm raised this same issue before the PUCO in its complaint case against SBC Ohio,[65] (the complaint was filed subsequent to the filing of the comments in this proceeding). In 02-579, the PUCO found that CoreComm had not addressed this issued with specificity on the record, as CoreComm has done with other problems rasied in the complaint case, in order for the PUCO to consider the validity of the problem. The PUCO did direct SBC Ohio to continue to work with CoreComm to rectify any call routing concerns.[66]

As to the issue raised by both CoreComm and the Joint CLECs regarding their ability to provide voice mail service with the UNE-P combination. CoreComm

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65 *In the Matter of the Complaint of CoreComm Newco, Inc., Complainant v. Ameritech Ohio, Respondent*, Case No. 02-579-TP-CSS (02-579).

66 02-579, Opinion and Order of November 26, 2002, at 26.

argues that SBC Ohio refuses to provide its resale-related voice mail service with the UNE-P combination. Joint CLECs argue that SBC Ohio will not permit CLECs access to the switch features that would allow CLECs to provide voice mail with "stutter dial tone" and/or lamp indicators over their own voice mail platforms in combination with a UNE-P offering. SBC Ohio argues that any CLEC or third-party voice mail platform can interface with SBC Ohio's central office switches in the exact same manner as SBC Ohio's retail voice mail platforms and obtain identical functionality, including "stutter dial tone." SBC Ohio argues that when a CLEC purchases unbundled local switching it obtains access to the "message waiting indicator" feature, which enables the port to indicate a stutter dial tone or activate a lamp indicator. SBC Ohio also points out that it offers CLECs an optional voice mail service pursuant to contracts. We find that this exact issue was addressed by the PUCO, subsequent to the filing of these comments, in its *October 4th Order*. Specifically, we found that voice mail service is not a telecommunications service, a UNE, or a regulated activity and we declined to order SBC Ohio to offer it in conjunction with its UNE-P combination.

Next, the Joint CLECs argue that SBC Ohio has failed to comply with Checklist Item 2, as well as Checklist Item 5, since it does not currently provide nondiscriminatory access to unbundled shared transport. Specifically, Joint CLECs argue that SBC Ohio refuses to allow CLECs full access to the routing tables necessary to route intraLATA toll traffic in the same manner SBC Ohio routes its own traffic. We note that this issue has been addressed by the PUCO (subsequent to the filing of these comments) in both the 00-1188 arbitration award and the *October 4th Order*. In those two dockets, the PUCO determined that SBC Ohio is required to route intraLATA toll traffic of CLECs using the UNE-P combination in the same

manner SBC Ohio routes its own traffic over the unbundled shared transport. Such decision is reflected in SBC Ohio's interconnection agreements filed and approved by the PUCO subsequent to our *October 4th Order*, in addition to SBC Ohio's proposed "UNE combinations amendment."

As to the issue raised by CoreComm that SBC Ohio regularly provisions CoreComm's customers with Caller ID without the customer requesting the service, SBC Ohio argues that when a CLEC purchases unbundled local switching, it obtains all the features in the switch, including Caller ID (where available), and it is up to CoreComm to specify which features SBC Ohio provisions on the ULS switch port.

The PUCO notes that CoreComm raised a similar issue (Caller ID with Name - "CNAM") in 02-579. In the complaint case, SBC Ohio committed to offer a remedy to this problem by June 8, 2002, and the PUCO requested that SBC Ohio update the record as to the status of its offering of CNAM feature on wholesale basis. On December 6, 2002, SBC Ohio filed an affidavit stating that effective June 8, 2002, SBC Ohio notified CLECs of a change in the ordering and provisioning process for the CNAM feature on unbundled local switching ports associated with UNE-P product. As a result of this change, SBC Ohio no longer provides CNAM as a "default" feature on UNE-P lines but, instead, it has to be specifically ordered on the LSR on an individual line basis. Also, as a result of this modification CLECs will be able to subsequently request the removal of CNAM feature. Accordingly, we find that although CoreComm raised the issue of Caller ID, not the CNAM, in the instant proceeding, the SBC Ohio implemented change in the ordering and provisioning process for CNAM feature on unbundled local switching ports associated with UNE-

P product should also provide a vehicle to CoreComm to order UNE-P without the Caller ID feature if it so desires.

Based on our evaluation of the record as discussed above, we believe that SBC Ohio's proposed "UNE combinations amendment", as amended to incorporate the PUCO's decisions in the *March 13th Entry*, allows CLECs to obtain access to existing and new UNE-P combinations on nondiscriminatory rates, terms and conditions, in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the 1996 Act; complies with 47 C.F.R. 51.315, and complies with the PUCO's decisions in various proceedings.

4. EEL Combinations

EEL combinations are comprised of unbundled loop, multiplexing/concentrating equipment, and unbundled dedicated transport. Pursuant to our Entry of December 20, 2001 in this proceeding, the PUCO resolved the disputed issue regarding the conversion of special access arrangements to EEL combinations. On May 2, 2002, the PUCO ordered SBC Ohio to file a proposed interconnection agreement amendment that contains the terms, conditions, and process for special access to EELs conversion. The PUCO further directed SBC Ohio to work with PUCO staff and other entities in a collaborative process to review and provide feedback on SBC Ohio's proposal. On June 3, 2002, SBC Ohio filed a proposed interconnection agreement amendment in this proceeding. The Ohio collaborative met on June 26, 2002 to discuss SBC Ohio's proposed amendment filed on June 3, 2002, including the following issues: CLEC certification, grooming of switched access circuits, termination liability provisions, state law applicability,

ordering provisions and other terms and conditions. As a result, the collaborative reached agreement on the proposed form of an interconnection agreement amendment that was jointly filed in this proceeding on July 31, 2002, as "Attachment 1" to the Fifth Joint Progress Report. The PUCO, in its *March 13th Entry* found that the Fifth Joint Progress Report to be reasonable, consistent with the FCC's June 2, 2000, *Supplemental Order Clarification*, and the PUCO's Entry of May 2, 2002.

As to the offering of new EEL combinations, in its proposed " UNE combinations amendment ", SBC Ohio offers the following ordinarily combined new EEL combinations as a standard offering:

2-wire analog loop to DS1 or DS3 unbundled dedicated transport (UDT)
4- wire analog loop to DS1 or DS3 UDT
2-wire digital loop to DS1 or DS3 UDT
4- wire digital loop (DS1 loop) to DS1 or DS3 UDT

In its "UNE combinations amendment", SBC Ohio offers CLECs to obtain new EEL combinations that are ordinarily combined but not included in the above list through a BFR-OC. The "UNE combinations amendment" includes the detailed BFR-OC process. Also in its "UNE combinations amendment", SBC Ohio offers CLECs to obtain new EEL combinations that are not ordinarily combined through the agreed upon BFR process in their respective interconnection agreement.

Next we address certain issues raised by various commenting entities. AT&T, WorldCom, and NuVox argue that SBC Ohio failed to establish final, PUCO-

approved terms, conditions, and pricing for EEL combinations offering. We already addressed the terms and conditions for both special access to EEL combination conversion as well as new EEL combinations. Regarding the EEL combination pricing, the PUCO in its May 2, 2002, Entry on Rehearing established an interim rate (subject to true-up upon approval of permanent rates by the PUCO) of $16.23 to be charged by SBC Ohio for each LSR submitted by the CLEC for conversion of special access circuit to EEL combination, which was incorporated by parties in the Fifth Joint Progress Report. Also, interim rates for new EEL combinations were agreed to in the "UNE combinations amendment".

We disagree with LDMI's request that the PUCO establish the following conditions for 271 approval: (1) reject SBC Ohio's reliance on the FCC's established criteria for special access circuits to EEL combination conversion; (2) find that an ordinary DS1 configuration is an existing combination; (3) find that the existing SBC Ohio nonrecurring charges for EELs to be clearly non-TELRIC, and reduce them down to $50.00 which SBC Ohio charges under its special access tariffs; (4) find that a CLEC may use an EEL for any purpose, including local dial tone, frame relay, ATM, high-speed Internet access, long distance access; (5) remove the restriction that an EEL is not allowed to be connected to the company's tariffed services; (6) make special access services available under TSLRIC pricing; and (7) eliminate SBC Ohio's ability to be the policeman on EELs service. We find that these proposed conditions are inconsistent with the 1996 Act's definition of UNEs in Sections 251(c)(3) and 251(d)(2), the 1996 Act's pricing requirements in Section 252(d)(1), the FCC's rules and decisions, and the PUCOs' policies and decisions.

Based on our evaluation of the record as discussed above, we believe that SBC Ohio's proposed "UNE combinations amendment", as amended to incorporate the PUCO's decisions in its *March 13th Entry*, and the "interconnection agreement amendment for conversion of special access arrangement to UNE combination" agreed to by the parties in the Fifth Joint Progress Report, allows CLECs to obtain access to existing and new EELs combinations on nondiscriminatory rates, terms and conditions, in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the 1996 Act; complies with 51.315 of the FCC rules, and complies with the PUCO's policies and decisions.

5. UNE Pricing

Pricing for interconnection services (Section 251(c)(2) of the 1996 Act), UNEs (Section 251(c)(3) of the 1996 Act), and reciprocal compensation (Section 251(b)(5) of the 1996 Act), are required to be determined based on pricing standards set forth in Section 252(d)(1) and (2) of the 1996 Act. These standards are incorporated by the FCC in 47 C.F.R 51.501 through 51.511 of its rules. Specifically, 47 C.F.R. 51.505 requires that such prices should not exceed the sum of the TELRIC" of an element plus a reasonable allocation of the forward-looking common costs to that element. Consistent with the FCC pricing rules, the PUCO also adopted its pricing guidelines in its local competition guidelines pursuant to 95-845.

On September 3, 1996, the PUCO initiated 96-922. After extensive evaluation of the voluminous record resulting from a lengthy hearing (more than 30 days), and several versions of cost studies, the PUCO approved the final TELRIC-based rates for UNEs required by the FCC, which became effective on June 1999.

First, we address AT&T's, and, to a certain extent, Consumer Entities' claim that SBC Ohio has certain approved prices that, based on current additional information, are obsolete and have fatal problems which adversely affect its ability to pass muster with the TELRIC standard (Henson Initial Affidavit at 21-26). We note that AT&T's claim regarding SBC Ohio's use of the SCIS model in developing its ULS and ULS-ST costs has been fully addressed by the PUCO in its January 31, 2002 Entry on Rehearing in 96-922. In that Entry on Rehearing, the PUCO rejected AT&T's argument and found that SBC Ohio's use of SCIS model, not the newly developed ARPSM model, still provides reasonable forward-looking costs consistent with the TELRIC principles. We also note that the PUCO, in its *October 4th Order* approving the $0.74 nonrecurring charge for the UNE-P migration, reconized the mechanization and process improvement as demonstrated on the record, contrary to AT&T's claim that the nonrecurring charges are out of date.

As to AT&T's claim that SBC Ohio's joint and common cost study, developed using the Arthur Andersen model, is outdated compared to other states' results, we find this claim to be unsubstantiated and unreasonable, especially when such costs were developed based on an extensive state-specific record. As to AT&T's claim that the PUCO approved TELRIC-based prices are outdated because it contains NVS costs that the PUCO ordered SBC Ohio to discontinue after three years, we note that on August 20, 2002, SBC Ohio filed a notice with the PUCO that it reduced all of its TELRIC-based prices, per the PUCO directives to eliminate the NVS from its rates, effective June 24, 2002. Accordingly, we believe that for the purposes of our Section 271 review, SBC Ohio's approved TELRIC-based rates are reasonable and consistent with the FCC's and the PUCO's TELRIC-based pricing methodology.

Next, we address AT&T's, WorldCom's, and CoreComm's concern that SBC Ohio's Section 271 application is premature since appropriate pricing for line sharing, xDSL loop conditioning, cageless and shared collocation and UNE-P (including shared transport) are matters that are pending resolution before the PUCO in 96-922. We note that since the filing of these comments, the PUCO has already established:

(1) Permanent TELRIC-based recurring rates for the UNE comprising SBC Ohio's UNE-P offering since June of 1999 in the TELRIC case.

(2) A permanent nonrecurring charge of $0.74 for SBC Ohio's existing UNE-P combinations pursuant to our *October 4th Order* in 96-922 (i.e., UNE-P migration charge).

(3) A permanent rate for ULS-ST UNE pursuant to our *October 4th Order*.

(4) An interim nonrecurring charge for SBC Ohio's new UNE-P combinations for residential customers of $33.88 (which the CLECs proposed for the PUCO's consideration) pursuant to our July 11, 2002, Entry in 96-922.

(5) An interim rate of $16.23 for each conversion of special access circuit to EEL combination pursuant to our Entry of

December 20, 2001, and affirmed in February 21, 2002 Entry on Rehearing in 96-922.

(6) Permanent rates for cageless and shared cage collocation arrangement pursuant to our March 13, 2003, Opinion and Order in 96-922. These rates are pending SBC Ohio's filing of compliance studies to be approved by the PUCO.

(7) Interim rates for xDSL loop qualification and loop conditioning pursuant to our March 13, 2003, Opinion and Order in 96-922.

As to the line sharing TELRIC rates, the PUCO concluded the hearing phase of the proceeding and, in light of the *USTA* ruling, chose not to issue a decision establishing a permanent line sharing rate at this time (*March 13th Opinion and Order*).

As to WorldCom's argument that SBC Ohio has several additional cost studies filed with the PUCO that have not yet been considered by the PUCO (such as dark fiber, sub-loops, and DS3 loops), we note that WorldCom acknowledges an agreement between CLECs (including WorldCom) and SBC Ohio not to pursue the investigation of cost studies unless SBC Ohio has a specific request from a CLEC. The record reflects that SBC Ohio has not received any requests for some of the identified UNEs and few requests, if any, for the other UNEs. In addition, the PUCO notes that we recently approved interim UNE rates set forth in SBC Ohio's interconnection agreement with MCIm in 01-1319. Accordingly, the PUCO will

pursue WorldCom's desire for PUCO consideration of the additional cost studies once the request is appropriately raised before the PUCO.

As to AT&T's argument that SBC Ohio has not developed cost studies for other offerings (such as line splitting, broadband services, and EELs), we note that the PUCO in our arbitration award in 00-1188 found that SBC Ohio is not required to offer line splitting as requested by AT&T.[67] As to broadband services we believe that AT&T has failed to identify with specificity the UNE for which it is requesting a cost study.

Accordingly, we note that SBC Ohio has PUCO-approved TELRIC rates for the majority of its interconnection services UNEs (including UNE combinations), and reciprocal compensation, which are established based on pricing standards described in Section 252(d)(1) and (2) of the 1996 Act and are consistent with 47 C.F.R. 51.501 through 51.511. A list of the PUCO-approved TELRIC-based rates for SBC Ohio is attached to this report and recommendation as Appendix B to this report and evaluation.[68] In addition, SBC Ohio has interim rates (subject to true-up upon finalization of PUCO-approved TELRIC-based rates) for some UNEs and UNE combinations.

We also note that since the passage of the 1996 Act, the PUCO has approved numerous interconnection agreements (over 300 agreements) between SBC Ohio and CLECs operating in Ohio pursuant to Sections 251 and 252 of the 1996 Act. These

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67 00-1188, Arbitration Award at 34.

68 SBC Ohio's TELRIC-based rates approved by the PUCO can also be found on the PUCO website at: http://www.PUCO.ohio.gov/ohioutil/Telecommunications/TELRIC/tricameritech.html.

agreements have been arrived at through arbitrations, mediations, or voluntary negotiations, including agreements arrived at pursuant to Section 252(i) of the 1996 Act (MFN provision) and under the pick and choose option. Although some of these agreements have been entered into and approved by the PUCO prior to the issuance of the FCC's *UNE Remand Order*, a large number of theses agreements have been entered into and approved by the PUCO pursuant to the *UNE Remand Order* unbundling requirements. SBC Ohio provided a list of selected approved interconnection agreements, as Attachment A to Mr. Alexander's affidavit, to demonstrate how it satisfies Checklist Item 2.

We also believe that SBC Ohio provides CLECs with nondiscriminatory access to UNEs pursuant to the *UNE Remand Order* and the *Line Sharing Order*.[69] SBC Ohio also offers all UNEs identified by the FCC and continues to offer those elements that are no longer UNEs but continue to exist under its current contracts. Since the filing of comments and reply comments in this proceeding, the PUCO has approved an interconnection agreement between SBC Ohio and MCIm in 01-1319, which includes all UNEs required by the *UNE Remand Order* and the *Line Sharing Order*. Since SBC Ohio's filing of the Sixth Joint Progress Report (October 4, 2002) the PUCO has approved several interconnection agreement amendments opting into SBC Ohio's offering of existing and new UNE combinations, including UNE-P and EELs. These amendments were interim in nature pending the PUCO's decision, which was issued on March 13, 2003, in this case.

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69 See Deere Initial Affidavit at 4, 5, for list of UNEs.

6. Intellectual Property

On April 27, 2000, the FCC issued its intellectual property order), which clarified at paragraph 9, that:

> [T]he "nondiscriminatory access" obligation in section 251(c)(3) requires incumbent LECs to use their best efforts to provide all features and functionalities of each unbundled network element they provide, including any associated intellectual property rights that are necessary for the requesting carrier to use the network element in the same manner as the incumbent LEC. In particular, incumbent LECs must exercise their best efforts to obtain co-extensive rights for competing carriers purchasing unbundled network elements.[70]

The PUCO believes that SBC Ohio's proposal regarding intellectual property is reasonable and comports with the FCC's intellectual property order. Further, the PUCO recognizes that SBC Ohio's position is consistent with the agreed upon language incorporated at paragraph 18 of the recently executed interconnection agreement filed by SBC Ohio and WorldCom in 01-1319.

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70 15 FCC Rcd. 13902.

E. PUCO Recommendation

We believe that SBC Ohio offers "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory", consistent with 47 U.S.C. §251(c)(3) and 252(d)(1) of the 1996 Act. Accordingly, the PUCO recommends that the FCC find that SBC Ohio has satisfied the Checklist Item 2 and its corresponding requirements delineated in Section 271(c)(2)(B)(ii) of the 1996 Act.

The PUCO notes that the comments filed with respect the nondiscriminatory access section of Checklist Item 2 were filed in 2001, prior to the filing of BearingPoint's interim report on its third-party OSS test. Further, these comments precede a number of the PUCO's determinations regarding SBC Ohio's OSS obligations and the resulting impact on the third-party OSS test. Therefore, the PUCO defers its discussion regarding the OSS portion of Checklist Item 2 to Appendix A of this Report and Evaluation.

V. CHECKLIST ITEM 3 - POLES, DUCTS, CONDUITS, AND RIGHT OF WAYS

Pursuant to Section 271(c)(2)(B)(iii) of the 1996 Act, SBC Ohio is required to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way that it owns or controls at just and reasonable rates in accordance with the requirements of Section 224 of the 1996 Act.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) Agreements

SBC Ohio states it has developed an interconnection agreement appendix (Appendix ROW), that has been incorporated into interconnection agreements approved by the PUCO, establishing detailed rates, terms and conditions for access to poles, ducts, conduits and rights-of-way. SBC Ohio represents that Appendix ROW is consistent with Section 224 of the 1996 Act, as well as the relevant sections of the FCC's *First Report and Order* (SBC Ohio Initial Brief at 46; Stanek Initial Affidavit of August 9, 2001, at 3, 4). SBC Ohio further states that its Appendix ROW is available to any telecommunications carrier, and incorporates both the input of numerous telecommunications carriers, and the resolution of issues resolved through various interconnection negotiations and state arbitration proceedings. The company claims it will also negotiate modifications or additions to the Appendix ROW, upon request, and will only deny access under "exceptional circumstances" where capacity is not available or cannot be made available for reasons of safety, reliability, or other valid engineering concerns. (SBC Ohio Initial Brief at 46, 47; Stanek Initial Affidavit at 4). Requests for access to rights-of-way may also be denied where SBC Ohio does not fully own the rights-of-way and is legally prohibited from granting such access (*Id.* at 4, 5). Accordingly, the company contends that, consistent with the FCC's *First Report and Order*, it complies and requires attaching parties to comply with nationally recognized safety and engineering requirements such as the National Electrical Safety Code, and other federal, state or local requirements (*Id.* at 6, 7). Finally, SBC Ohio notes that detailed operational information is further defined

in its "Guidelines for Access to SBC Ohio Structure" a copy of which may be accessed at http://asac.SBCOhio.com Ohio.com (SBC Ohio Initial Brief at 47; Stanek Initial Affidavit at 4).

(b) Rates

SBC Ohio identifies its attachment rates for use by telecommunications carriers as $2.52 per pole attachment per year and $0.37 per foot of inner duct per year. It also cites the affidavit of Dr. Kent A. Currie as addressing the cost methodology used by SBC Ohio when establishing these rates (SBC Ohio Initial Brief at 47; Stanek Initial Affidavit at 12).

Regarding rates for access to rights-of-way, SBC Ohio notes that the FCC's *First Report and Order* does not address charges for such access, and in its pole attachment telecommunications rate order,[71] the FCC further declined to adopt detailed standards that would govern all rights-of-way situations. Instead, SBC Ohio states that the FCC intends to address complaints about rates for access to a utility's rights-of-way on a case-by-case basis (SBC Ohio Initial Brief at 47; Stanek Initial Affidavit at 28).

Where access to rights-of-way owned or controlled by SBC Ohio is provided in connection with access to an SBC Ohio structure, such as a pole or conduit, the company represents that it does not charge for the access to the rights-of-way.

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71 *In the Matter of the Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd. 6777, 6832 (1998).

However, SBC Ohio does charge for access to rights-of-way not associated with access to an SBC Ohio structure. Accoding to SBC Ohio, the charges will be determined on a case-by-case basis, and will take into account the size of the area to be used by the CLEC and the number of existing users of SBC Ohio's easement, as well as other relevant factors. Additionally, SBC Ohio will charge any reasonable, documented administrative costs incurred in processing a request for access to rights-of-way, as permitted by 47 U.S.C. §224(d)(1) (SBC Ohio Initial Brief at 47; Stanek Initial Affidavit at 12, 13). In the limited instances where an entity gains access to rights-of-way owned exclusively by SBC Ohio, the ILEC maintains its right to recover a pro rata portion of its original costs for such rights-of-way (*Id.* at 4, 5).

(c) Nondiscriminatory Treatment

SBC Ohio states that it provides CLECs with access to the very same records (maps, engineering records, etc.) concerning its poles, ducts, conduits and rights-of-way as utilized by SBC Ohio's own engineering personnel to design their construction projects, albeit redacted to conceal confidential or proprietary SBC Ohio information (SBC Ohio Initial Brief at 48; Stanek Initial Affidavit at 5). Further, the company states that such access is not conditioned upon the submission of application for access to specific pole attachment or conduit occupancy space; rather, the records are available weeks or months prior to a CLEC's application for structure space (SBC Ohio Initial Brief at 48; Stanek Initial Affidavit at 5).

Before actually placing the specified facilities on or in its structure, SBC Ohio requires an applicant to first submit a written application and receive from SBC Ohio an occupancy permit. The applicant's request must include sufficient details for SBC

Ohio to analyze the applicant's proposed use of the space based on capacity, safety, and reliability and engineering considerations. SBC Ohio then verifies the availability of the space by performing a field survey, determines what make-ready work, if any, is needed, plans and engineers such make-ready work and estimates the costs associated with the work (*Id.* at 5, 6). Consistent with the *First Report and Order*, SBC Ohio states that it must either grant or deny an applicant's request for access no later than 45 days after receiving the request. If access is granted, SBC Ohio will advise the applicant in writing what preliminary, make-ready work will be necessitated by the access request, as well as an estimate of the associated charges (*Id.* at 8).

When evaluating a CLEC's request for access to poles, ducts, conduits, and rights-of-way, SBC Ohio contends it applies the same capacity, safety, reliability and engineering standards to which it is subject for purposes of its own use of the facilities. SBC Ohio claims that the federally mandated standards are the only basis on which it would deny a CLEC's access request. In the event that a denial appears likely, SBC Ohio contends it complies with the *First Report and Order* by promptly contacting the applicant so that alternatives can be discussed. Finally, when an access request is in fact, denied, SBC Ohio states that it also complies with both the First Report and Order and pole attachment complaint procedures[72] by providing that applicant with a written denial statement that specifically identifies all relevant evidence and information supporting its denial and explains how such evidence and information relates to the capacity, safety, reliability or engineering standards (SBC Ohio Initial Brief at 48; Stanek Initial Affidavit at 6, 8).

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72 47 C.F.R. 1.1403(a).

Citing the *First Report and Order*'s requirement that an ILEC not favor its future business needs over a competitor's current needs by reserving space on or in its own facilities, SBC Ohio states that its Appendix ROW includes procedures intended to ensure that all available pole, duct, conduit and right-of-way space (i.e., space that is neither occupied nor assigned) is fairly allocated among all cable operators and telecommunications carriers, including itself (SBC Ohio Initial Brief at 48; Stanek Initial Affidavit at 7, 8). Additionally, the company notes that a CLEC is assigned space on, or in, SBC Ohio's structure upon receipt of the CLEC's written request for access. An occupancy permit is issued upon the completion of any necessary make-ready work; however, beginning with the assignment of space, the requesting entity must use the space within six months, or the assignment expires and the space becomes available for occupancy by any other interested, qualified party. According to SBC Ohio, the very same assignment procedures are also applicable when it seeks access to its own facilities (*Id.*).

Regarding make-ready work, SBC Ohio asserts that it will, at the requesting carrier's expense, modify its poles or conduit system to accommodate the requesting carrier's facilities in the same time frames, and consistent with the same capacity, safety, reliability and engineering standards, that SBC Ohio would apply to itself if the work were performed for its own benefit (SBC Ohio Initial Brief at 48; Stanek Initial Affidavit at 8, 9). SBC Ohio further states that it will generally be responsible for performing make-ready work at the applicant's expense, and will do so within the same time intervals that would apply if it were conducting the work for its own benefit. However, either the applicant, as a qualified contractor, or a mutually approved third party contractor (selected from an SBC Ohio list) will be permitted to

perform the make-ready work in instances where either SBC Ohio cannot perform make-ready work within the requesting party's time frame, or when SBC Ohio accepts such an offer from the applicant. Moreover, SBC Ohio states that it will not refuse, without due cause and justification, an applicant's offer to perform the make-ready work. Finally, to prevent unnecessary delays, an applicant is given 45 days, within which it must either tell SBC Ohio to go forward with the proposed make-ready work, or contact SBC Ohio to negotiate alternative modifications or make-ready work (*Id.* at 9).

(d) Modifications to Structure/Make-Ready Work

Regardless of whether the entity seeking access is a CLEC or SBC Ohio itself, the company points out that the Pole Attachment Act[73] establishes a mandatory "cost-causer pays" principle with respect to the expenses associated with accommodating a request (e.g., rearranging other parties' attachments, installing a taller pole) for an addition of a new attachment or the modification of an existing one. SBC Ohio further states that its Appendix ROW incorporates three other federal requirements pertaining to the modification of its facilities. First, the company provides at least 60 days advance written notice to entities already occupying space on or in its structure before modifying or altering poles, ducts, conduits and rights-of-way, unless it has adopted different notification procedures via a private agreement. Second, SBC Ohio's Appendix ROW states that all parties benefiting from a facility modification must also bear their proportionate share of the cost of the modification. Third, the Appendix ROW allows those parties who share in the cost of a facility modification to obtain their proportionate share of reimbursement from

other parties, including SBC Ohio, who later utilize additional capacity engendered by that modification (SBC Ohio Initial Brief at 49; Stanek Initial Affidavit at 11, 12).

(e) Operational Issues After Access Has Been Granted

Pursuant to the *First Report and Order*, SBC Ohio states that carriers who construct facilities on, or in, SBC Ohio's structure should comply with the same set of capacity, safety, reliability and engineering standards used by SBC Ohio in evaluating requests for access. Once such access has been acquired, SBC Ohio holds each party responsible for maintaining its own facilities, and paying and supervising all personnel involved in performing such maintenance activities (*Id.* at 10, 11).

SBC Ohio permits all entities occupying space in its conduit to make short-term use of its maintenance ducts for repair and maintenance activities, but typically only in emergency situations (*Id.* at 11).

Should an entity surrender its occupancy permit for any reason (including forfeiture of the terms of its agreement), SBC Ohio places responsibility on the attaching entity for removal of its own facilities. However, SBC Ohio maintains the right to remove such facilities itself, at the attaching entity's expense, if the entity fails to do so within 60 days of being notified by SBC Ohio (*Id.*).

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73 47 U.S.C. 224(h).

(f) Performance

SBC Ohio identifies two specific performance measurements that have been implemented to help enforce the company's efforts to respond timely to applications for access to its poles, ducts, conduits and rights-of-way. These measurements are: (1) percent of requests processed within 35 days (PM #105); and (2) average days required to process a request (PM #106) (SBC Ohio Initial Brief at 50; Stanek Initial Affidavit at 2, 3). A third performance measurement - structure requests completed outside of interval - is designed to track the number of times SBC Ohio fails to meet its stated time frame (Fioretti Initial Affidavit of August 9, 2001, Attachment C at 6).

B. Interested Entities' Initial Comments/Affidavits

1. WorldCom's Comments/Affidavits

(a) Rates

In his affidavit filed on behalf of WorldCom, James Wood claims that prices charged by SBC Ohio are unreasonable and, that often times, the prices quoted by SBC Ohio exceed the costs that WorldCom would incur to construct new facilities. WorldCom witness Wood further states that SBC Ohio's process for determining whether space is available is also expensive and unduly time-consuming. In support of this contention, WorldCom witness Wood cites difficulties WorldCom experienced with SBC Ohio concerning a request to place facilities within the ILEC's duct space in Fostoria, Ohio. Specifically, WorldCom was charged an initial fee before SBC Ohio would examine its records in that area. Despite this charge, WorldCom represents that SBC Ohio was still unable to determine where or if its ducts were available in Fostoria. Although WorldCom opted not to proceed with the facilities request,

WorldCom witness Wood suggests that if it did, the company could have spent up to an additional three months of nonrecoverable project planning time and approximately $2,500.00 in nonrefundable fees, only to find that SBC Ohio determined no space was available for WorldCom's facilities (Wood Initial Affidavit of September 20, 2001, at 1, 2).

2. OCTA's Initial Comments/Affidavits

(a) Nondiscriminatory Treatment

The OCTA challenges SBC Ohio's claim regarding the use of alternate qualified contractors to perform necessary make-ready work, stating that one of its members has been denied such an option (OCTA Initial Comments of September 20, 2001, at 2). OCTA further alleges that SBC Ohio's assertions regarding time intervals for performing make-ready work are virtually meaningless, as SBC Ohio had not established a specific time frame for completion of the make-ready work it performs on its own behalf. Further, OCTA states that one of its members waited more that 45 days for SBC Ohio to complete its make-ready work, and another member was still awaiting, at the time of its initial comments, SBC Ohio's completion of a capacity expansion request that was approved by the ILEC on April 25, 2001 (*Id.*).

OCTA also disputes SBC Ohio's claims regarding its nondiscriminatory application of capacity, safety, reliability and engineering standards, as SBC Ohio has provided different responses to the same access request (*Id.* at 3).

(b) Modifications to Structure/Make-Ready Work

Regarding SBC Ohio's assertion that it will allocate the costs of make-ready work amongst all entities that benefit from the modification OCTA states that, while it considers the principle appropriate, SBC Ohio must put into clear terms how this principle affects others. OCTA contends that SBC Ohio's invoices should be timelier and contain sufficient detail of work performed, location of work, and parties requesting work to justify the billing (*Id.*).

(c) Performance

OCTA states that the experience of it members reveals that SBC Ohio is not even close to meeting its stated standard of processing 90 percent of its requests within 35 days. Rather, OCTA represents that "simple applications" take typically 90-120 days to get a response with some taking six months to two years. Further, make-ready rearrangements typically take three to six months to complete, and requests for conduit access generally take six months to one year to process. OCTA claims that much of the processing time lost is due to internal processes at SBC Ohio. As an example, OCTA cites one member's experience where its project was delayed a week because SBC Ohio did not have a vehicle to drive its personnel 23 miles to inspect ducts. OCTA contends that such delays create an unnecessary barrier to competition making it difficult to provide high speed Internet access and advanced services to the public in a timely manner. Furthermore, OCTA states that the costs for field inspection of requested conduit access are often excessive and SBC Ohio often requires applicants to resubmit requests and pay duplicate fees when only minor changes are requested to the original application. In one particular instance,

OCTA claims a member was erroneously charged by SBC Ohio for work that was performed by a third-party contractor (*Id.* at 4).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

(a) Rates

Regarding WorldCom's experience with SBC Ohio in Fostoria, Ohio, SBC Ohio points out that the initial assessment charged to WorldCom was not an application fee but, rather, was a bill for the SBC Ohio engineer's time spent performing a record check, which was completed within seven business days, for the purpose of identifying the location of SBC Ohio structure within the area requested (Stanek Reply Affidavit of October 22, 2001, at 8). SBC Ohio witness Stanek further explains that the additional charges referred to by WorldCom (had WorldCom decided to proceed with its request) would have been for the subsequent field survey necessary to determine if there was actual available space within the conduit identified by the records check (*Id.* at 9). Finally, SBC Ohio disputes WorldCom's reference concerning a potential 90-day time frame for responding to a WorldCom request for conduit space. SBC Ohio believes that, given the size of the actual access request in Fostoria, SBC Ohio would have provided WorldCom with the results of the field survey within 25 business days (*Id.*).

(b) Nondiscriminatory Treatment

Regarding OCTA's initial comments alleging disparate treatment of similar access requests, SBC Ohio witness Stanek states that SBC Ohio's responses to

otherwise similar requests may differ on the basis that space availability in given conduit run changes over time due to new or cancelled requests for access to that conduit (*Id.* at 4). Responding to a claim that SBC Ohio recently refused a request by one of OCTA's members to utilize another qualified contractor for make-ready work, SBC Ohio witness Stanek indicates that she contacted SBC Ohio's structure access coordinator, who has been the Ohio contact for the company's structure access center since January 2000, and the individual had no recollection of such a denial. SBC Ohio witness Stanek notes that the company maintains a list of 95 contractors in Ohio that have submitted the necessary information (e.g., insurance coverage) to be deemed as qualified contractors by SBC Ohio (*Id.*).

OCTA's comments regarding SBC Ohio's time frames for make-ready work and capacity expansions are also refuted by SBC Ohio witness Stanek. Specifically, she contends that several different factors prevent the company from identifying a single, maximum time frame for completion of such activities. These factors include: (1) variations of the scope and complexity of make-ready work with respect to different access requests; (2) reliance upon the schedules of third parties (e.g., the time required to obtain a municipal permit from a local government); and (3) unforeseen circumstances, such as a blockage in the middle of a duct, that is not ascertainable from the field survey work (*Id.* at 5).

(c) Modifications to Structure/Make-Ready Work

SBC Ohio witness Stanek claims that OCTA's comments concerning SBC Ohio's invoicing makes no sense, as all charges for field survey and make-ready work performed by SBC Ohio are clearly defined, as well as approved and paid for

in advance by the requesting party. Even when additional make-ready work is discovered after the work has begun, SBC Ohio witness Stanek maintains that all additional charges are faxed to the applicant for approval and pre-payment before the work is completed (*Id.* at 6).

(d) Performance

SBC Ohio witness Stanek states that OCTA's assertions concerning SBC Ohio's performance are incorrect (including claims that certain delays were a result of transportation difficulties) and that the vast majority of access requests are processed within the 35 day interval, which is less than the 45 day interval prescribed in the *First Report and Order*. SBC Ohio witness Stanek notes that this interval represents the time between submission of an application, completion of the field survey, and notification to the applicant about availability of the requested structure along with a cost estimate of any make-ready work required before occupancy. Contrary to OCTA's implication, SBC Ohio witness Stanek states that the interval does not include the time required to perform make-ready work, given the numerous factors that can impact its completion. Finally, SBC Ohio witness Stanek offers August 2001 access request data in support of the assertions regarding successful completions within the 35 day interval (*Id.* at 6, 7).

2. OCTA's Reply Comments/Affidavits

OCTA states its agreement with the initial comments of WorldCom regarding Checklist Item 3, especially be in the areas of unreasonable prices and fees and the delays in obtaining access to SBC Ohio structure.

D. PUCO Discussion

On June 25 - 27, 2002, the PUCO conducted an industry collaborative to provide SBC Ohio and interested entities with an opportunity to further develop statements made within their previous written comments and reply comments. Based on the collaborative record, the PUCO notes that the prior allegations raised by the commenting entities were uncorroborated.

In regard to Checklist Item 3, the PUCO believes that SBC Ohio's filing of August 9, 2001, provides support to its claim that this competitive check list item has been met. Further on March 25, 2003, SBC Ohio filed with the PUCO, in Case No. 97-1658-TP-UNC[74], an amendment to its tariff application made December 15, 1997. The application was amended to reflect changes discussed and negotiated with the PUCO's staff since the original filing. In addition to the filing, SBC Ohio submitted a revised copy of the structure access guidelines reflecting the tariff changes. SBC

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74 *In the Matter of the Application of Ameritech Ohio for Approval of a Pole Attachment and Occupancy Accommodation Tariff and Related Matters.*

Ohio's revised pole attachment and structure access guidelines were approved pursuant to the PUCO's Entry of May 8, 2003.

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio is in compliance with, and has met it obligation with respect to, Checklist Item 3.

VI. CHECKLIST ITEM 4 - UNE LOCAL LOOPS

Section 271(c)(2)(B)(iv) of the 1996 Act requires SBC Ohio to provide, in a nondiscriminatory manner, unbundled local loop transmission from the central office to the customer's premises. To do so, SBC Ohio must offer or make available different types of loops, including two-wire and four-wire voice-grade loops, ISDN loops, xDSL capable loops, DS1 and DS3 loops, and required loop conditioning for digital loops. Further, SBC Ohio is required to provide or make available unbundled sub-loops elements and line sharing.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) Nondiscriminatory Access to Stand-Alone Loops

SBC Ohio states that it meets the requirements of Checklist Item 4 and has implemented binding terms and conditions for unbundled local loops, sub-loop elements, dark fiber, and the HFPL as required by the FCC (Alexander Initial

Affidavit at 30). SBC Ohio states its local loop offerings include all features, functions and capabilities of the transmission facility, and line conditioning (*Id.*). According to SBC Ohio, it offers the following types of unbundled local loops through approved interconnection agreements (*Id.* at 31):

> two-wire and four-wire analog voice loops
> two-wire digital loop (160 Kbps to support basic rate ISDN)
> four-wire digital loop (1.544 Mbps to support DS1 services)
> two-wire and four-wire xDSL loops
> DS3 digital loop (45 Mbps)

In addition to the above loops, SBC Ohio states it offers loop conditioning options[75] and coin options in interconnection agreements and will provide additional loop types and additional types of conditioning pursuant to the BFR process (*Id.* at 31-32; Deere Initial Affidavit at 29). Also, SBC Ohio states it offers cross-connects to collocation with each type of unbundled loop (*Id.* at 30).

Next, SBC Ohio asserts it offers the following sub-loop elements in interconnection agreements:

> two-wire and four-wire analog voice sub- loops
> two-wire digital sub-loop (ISDN)

four-wire digital sub- loop (DS1)
two-wire and four-wire xDSL sub-loops
DS3 digital sub-loop

(Alexander Initial Affidavit at 32).

SBC Ohio states that access to sub-loops is generally nonexistent at remote terminal (RT) sites because the digital loop carrier (DLC) equipment at the sites is usually hardwired to copper pairs which run from the serving area interface (SAI) to the feeder distribution interface (FDI). By doing so, SBC Ohio minimizes the cost required to install end-user services provisioned over DLC (Deere Initial Affidavit at 33). Accordingly, pursuant to SBC's voluntary commitment adopted by the FCC[76], SBC Ohio provides an access point to sub-loops at or near each RT, via an engineering controlled splice (ECS), upon a CLEC request, and through a special construction arrangement (*Id.*). SBC Ohio asserts that a CLEC has the ability to access all SAIs served by an RT site with the ECS, which eliminates the need for a CLEC to place its own facilities between a remote DSLAM and every SAI, or place its DSLAMs at every SAI (*Id.*).

SBC Ohio states that CLECs are offered dark fiber as loops and sub-loops (*Id.* at 35). According to SBC Ohio, CLEC access to dark fiber loops is provided through

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75 These include: a conditioning opttion to reduce loss to no more than 5db, a ground start operation for PBX trunks (Deere Affidavit at 30).

76 Second Memorandum Opinion and Order, *Application of SBC Ohio Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24,*

the same arrangements as for other forms of loops (*Id.*). SBC Ohio states that CLECs may access dark fiber sub-loops wherever they exist[77] (*Id.*). SBC Ohio witness Deere states, "[i]f a CLEC wishes to request dark fiber, it must submit a dark fiber facility inquiry, providing its specific point to point (A to Z) dark fiber requirements" (*Id.* at 36). SBC Ohio witness Deere references that "[i]nformation for ordering dark fiber loops, sub-loops and associated cross-connects is also contained in the CLEC Handbook at UNE, unbundled dark fiber, Section 2.0" (*Id.*).

SBC Ohio witness Deere states that SBC Ohio provides dark fiber in the feeder segment of the loop as an UNE pursuant to certain conditions (*Id.*). SBC Ohio may reclaim, from the CLECs, the right to use dark fiber, whether or not the dark fiber is being utilized by CLEC, upon 12 months written notice to the CLEC. SBC Ohio will negotiate the timing of the reclamation and provide an alternative facility for the CLEC with the same bandwidth, and at the same quality, that the CLEC was using prior to reclaiming the facility, without any additional cost to the CLEC. SBC Ohio must also demonstrate to the CLEC that the dark fiber will be needed to meet SBC Ohio's carrier-of-last-resort bandwidth requirements within the 12 months following the revocation.

Next, SBC Ohio states that if a CLEC accesses a copper distribution sub-loop at a DLC served RT, it can access the HFPL at that point if SBC Ohio is providing voice service on the loop (*Id.*). Also, SBC Ohio states that DLC equipment is offered

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25, 63, 90, 95 and 101 of the Commission's Rules, 15 FCC Rcd. 17521 (2000) ("*Project Pronto Modification Order*").

77 SBC Ohio witness Deere states that fiber distribution plant is not common in Ohio (Deere Initial Affidavit at 37).

as a sub-loop UNE on a case-by-case basis through the BFR process (*Id*. at 37). SBC Ohio states that, if a CLEC requests an unbundled loop served by an IDLC or remote switching technology,[78] SBC Ohio will serve the CLEC by provisioning it via a spare, existing physical pair or via a UDLC unbundled loop at no charge, in accordance with its facility modification (FMOD) policy (*Id*.). However, if no spare loops are available, and all possible alternatives have been exhausted[79], then the CLECs are notified through the IDLC/remote switching unit (RSU) notification process within 24 hours of the form order confirmation (FOC) (*Id*.). SBC Ohio asserts that in IDLC situations where no other FMOD can be made to accommodate a CLEC's request for a loop, construction work will be required to provide the requested facilities. This work will be performed at an additional charge upon authorization (*Id*. at 37, 38).

(b) Line Sharing

SBC Ohio states it developed its high frequency portion of the loop (HFPL) offering through extensive collaboration between itself and the CLEC community on a 13-state basis (Silver Initial Affidavit at 8). According to SBC Ohio, this collaborative was able to identify issues and develop future implementation details[80]. During the line sharing collaborative, SBC Ohio also agreed to provide line splitters to CLECs for line sharing purposes on a per line basis. At the time of its comments, SBC Ohio represents that it was providing splitters for line sharing in 112 Ohio

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78 Witness Deere states that 4.5 percent of SBC Ohio Ohio's customer loops are served via IDLC (Deere Initial Affidavit at 37).

79 Possible alternatives include looking for spare copper facilities and making simple modifications (Deere Initial Affidavit at 37).

central offices (*Id.*). In addition, SBC Ohio states that it has set nonrecurring charges for specific xDSL loop conditioning activities for the HFPL UNE (*Id.*).

(c) Line Splitting

SBC Ohio asserts that CLECs are able to engage in line splitting[81] pursuant to SBC Ohio's offerings (*Id.*). According to SBC Ohio witness Silver, "SBC Ohio supports line splitting where a CLEC purchases separate elements (including unbundled loops, unbundled switching, and cross-connects for these UNEs) and combines them with their own, or a partner CLEC's, splitter in a collocation arrangement" (*Id.*). Also, SBC Ohio states that CLECs can order line splitting when requesting a brand new service arrangement (no reuse of facilities in an existing service arrangement) (*Id.* at 30-31). SBC Ohio represents that it was meeting with CLECs to improve order processes for when CLECs wish to line split by reusing facilities used as part of UNE-P or line sharing arrangement (*Id.* at 31). In sum, SBC Ohio contends that its current offerings permit CLECs to engage in line splitting and satisfy its Section 271 obligations.

(d) Facilities Modification

SBC Ohio states that its facilities modification (FMOD) process was collaboratively developed by SBC Ohio and CLECs to address the CLECs concerns regarding facility availability and to ensure that there is no discrimination between

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80 SBC Ohio stated it continues to collaborate with CLECs on a monthly basis to resolve line sharing issues (*Id.* at 9).

retail and wholesale customers[82] (*Id.* at 44, 45). SBC Ohio asserts the primary purpose of the FMOD process is to significantly reduce the number of CLEC UNE orders canceled as a result of a "no-facilities" situation, which occurs when no facilities exist to provision a CLEC's request (*Id.* at 45). According to SBC Ohio, the FMOD process is also intended to improve the communications process with CLECs when "no facilities" situations occur, and to provide consistent time frames for various facilities notifications provided to CLECs (*Id.*).

SBC Ohio states that its FMOD policy describes the terms and conditions under which facility modifications or new construction activities will be made or offered to provision CLEC requests for UNEs (*Id.*). SBC Ohio states that its FMOD policy also describes the UNE order status notification forms sent to CLECs, including the timing, and the overall process flow (*Id.* at 45, 46). SBC Ohio's FMOD policy is composed of four parts: (1) simple modifications, (2) complex modifications, (3) IDLC/RSU situations, and (4) new builds (*Id.* at 46).

Simple modifications are performed without additional charge to CLECs and the requested UNE is typically provisioned without a delay to the established due date (*Id.*). SBC Ohio provides the following examples of simple modifications:

Line and station transfers
Clear defective pair/defective pair recovery

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81 Line splitting is the use of an SBC Ohio unbundled loop by a CLEC, or two CLECs for the provision of voice and data services over a single loop when SBC Ohio is not a carrier of either the voice or data service.

82 Accessible Letters CLECSAM00-53 (October 27, 2000) and CLECAM01-096 (April 4, 2001).

> Install plugs/cards in repeater cases
> Wire out of limits
> Break connect through
> Install universal digital carrier (UDC)
> Install PG-plus (pair gain for unbundled ISDN only).

(*Id*.).

Complex modifications include work such as conditioning, placing or rearranging cable or terminals, and expanding electronics to provide additional capacity (*Id.* at 47). SBC Ohio states that, if a complex modification is necessary, the CLEC is provided notice within 72 business hours of the initial delay notice (*Id*.). The complex modification notification will provide a description of the work required to provision the order, whether the CLEC will be charged, and a new due date (*Id*.). SBC Ohio allows the CLEC ten days to accept or reject the described modification work if it will be charged for it, and, in these instances, CLEC authorization is required before a new due date is provided (*Id*.). SBC Ohio states the new due date may be extended, but the order is not cancelled; instead, it is revised to reflect a new due date and the CLEC is issued a revised FOC (*Id*.).

For situations where the requested UNE is served by IDLC or RSU, SBC Ohio asserts that the CLEC is notified according to the FMOD notification and the quote process discussed *supra* (*Id.* at 47, 48). When SBC Ohio determines a requested UNE is provisioned via IDLC/RSU, it will complete simple modifications and some complex modifications, like rearranging or placing cable and/or new equipment, at no charge to the CLEC, except for certain conditioning scenarios (*Id.* at 48).

According to SBC Ohio, a CLEC is notified of an IDLC situation only after all options to identify or make available a spare loop have been exhausted (*Id.*). If a CLEC requests a quote, SBC Ohio states that one is provided within 30 days after SBC Ohio receives the CLEC's authorization (*Id.*).

As to new builds, SBC Ohio states that "new build" scenarios are those where there are not existing facilities in place or planned. This typically occurs when there is a new business, residential development, or building to which facilities have not been previouusly provided by SBC Ohio (*Id.* at 49). According to SBC Ohio, pursuant to its FMOD policy, a CLEC is notified when a new build situation exists and that it must further pursue the provisioning of its requested UNE through SBC Ohio's construction policy for new buildings, businesses, and residential developments (*Id.* at 49).

(e) Hot Cuts

To transfer and activate customers, SBC Ohio offers facilities-based CLECs essentially three different "hot cut" processes to transfer an end user from SBC Ohio to the CLEC (Brown Initial Affidavit of August 9, 2001, at 28). SBC Ohio contends it makes these processes available to CLECs in accordance with 271 Checklist Item 4. These processes, which were jointly developed with, and agreed upon by, the CLEC community, are: the coordinated hot cut process (CHC), the noncoordinated hot cut process, and the frame due time (FDT) conversion (*Id.* at 28).

CHC orders are manually handled in the LOC, and require a relatively high level coordination from start to finish between SBC Ohio and CLEC before, during,

and after the cutover of the end-user. SBC Ohio explains that if an order requires a CHC, the CLEC will provide its desired cut time on the LSR, and SBC Ohio will then provide a confirmation that it can perform the cut at the time requested or at a different time (*Id.* at 29).

SBC Ohio states that when the LSC has scheduled the CHC, a work order will be produced and sent electronically to the LOC. Upon receipt, or two days prior to the due date, a LOC technician will screen the order in an effort to eliminate potential roadblocks and provide CLECs with advance notification of potential conversion issues (*Id.*).

SBC Ohio describes that the CHC process begins when, on the due date, the CLEC contacts the LOC, which then contacts the SBC Ohio central office to begin the physical cut process in order to change the wiring from the SBC Ohio switch to the CLEC switch. During this physical cut process, the SBC Ohio technician verifies that the correct dial tone is programmed on the CLEC's switch[83] and that the correct loops are being reused (*Id.* at 30). If everything is verified and is correct, SBC Ohio will proceed with the conversion, but if problems are identified the conversion will not take place. When everything is completed, or if problems are found, the LOC is notified, which then notifies the CLEC of the status of the cutover. For cuts that experience trouble, SBC Ohio states that it has developed a process which allows for the reestablishment an end-user's SBC Ohio account, instead of requiring the end user to contact SBC Ohio. Also, as part of this process, SBC Ohio has agreed to take

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83 SBC Ohio also offers CLECs an optional DT/ANI validation prior to the due date and a DD-2 DT/ANI validation for those CLECs that routinely complete translation work by 8 a.m. DD-2 (Brown Affidavit at 31).

trouble calls related to hot cuts in the provisioning/coordination center instead of the maintenance center (*Id.* at 30).

According to SBC Ohio, the noncoordinated hot cut process is designed so end-users can be cutover in a planned shorter time frame than the CHC process. SBC Ohio can pursue these cutovers anytime between 8:00 a.m. to 5:00 p.m. on the due date; intercompany communications is not required at the time of cutover (*Id.* at 31).

CLECs can also choose a FDT[84] conversion for their orders. FDT conversions require less coordination between SBC Ohio and CLECs, but CLECs can still request the conversion be completed at or near a certain time. This process does not require manual intervention by either the CLEC or SBC Ohio to proceed with the conversion at the requested date and time. SBC Ohio offers CLECs the capability to access information concerning the status of their FDT orders (*Id.* at 32).

(f) Nondiscriminatory Access to xDSL-Capable Loops Used for Advanced Services

(1) Stand-alone xDSL Capable Loop

SBC Ohio states that in addition to spectral capability standards and spectrum management rules, the provisioning of xDSL services are subject to numerous technical constraints such as loop length and condition, presence of excessive bridge taps, and load coils (Deere Initial Affidavit at 38). According to SBC Ohio, it does not deny CLEC requests to use a SBC Ohio loop to deploy a DSL technology unless it has

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84 The FDT conversion proceess is described in accessible letter CLECAM01-155.

demonstrated to the PUCO that the deployment of such technology will significantly degrade the performance of other advanced or traditional services (*Id.* at 38, 39). SBC Ohio asserts it also has implemented practices and procedures which allow for CLEC to deploy new or non-standard xDSL technologies provided that they do not degrade the performance of other services, as previously mentioned (*Id.* at 39-42).

SBC Ohio states it automatically removes load coils, repeaters, and bridge taps for loops under 12,000 feet for no charge (Silver Initial Affidavit of August 9, 2001, at 10). SBC Ohio avers that it offers xDSL capable loops and xDSL loop conditioning to CLECs through interconnection agreements. SBC Ohio represents that xDSL capable unbundled loop, standard xDSL loop conditioning, and the HFPL UNE products have TELRIC-based pricing. Specifically, the rates for xDSL capable unbundled loops were approved in 96-922. The rates for standard xDSL loop conditioning, loop qualification, and the HFPL UNE were pending in 96-922 at the time of SBC Ohio's filing of its initial comments/affidavits.

(2) Pre-ordering (loop make-up)

SBC Ohio states it has been providing xDSL capable UNE loops to CLECs since 1997, and it began provisioning the HFPL UNE in June 2000 (*Id.* at 4). Accordingly, SBC Ohio represents that it has developed and implemented OSS processes that allow CLECs to provide any type of xDSL to their end users, as long as the carrier operates within national industry guidelines (*Id.* at 6).

SBC Ohio contends it provides CLECs with nondiscriminatory access to its loop make-up information (*Id.* at 6, 7). Consistent with this representation, SBC Ohio

states loop qualification information is made available to CLECs in accordance with the terms of its interconnection agreements. The information is available to CLECs in two electronic and one manual format, and provides the loop make-up data that the service provider requires to make a decision regarding the provisioning of an advanced service (*Id.* at 13). CLECs may submit loop qualification data requests via SBC Ohio's pre-order interfaces, Enhanced VERIGATE and EDI/CORBA, to get either actual loop make-up information, based on an end-user's address or working telephone number, or archived actual data, which is stored in a dedicated loop qualification database[85], in real time (*Id.* at 14, 15). When loop qualification data is not contained in any of SBC Ohio's electronic databases, SBC Ohio states that CLECs can use SBC Ohio preorder interfaces to request that a manual look-up of loop make-up information be completed by SBC outside plant engineering, which will complete the request within three to five business days and return the results of the inquiry to a specified email address upon request (*Id.* at 15). This information is added to the electronic loop-make up database upon retrieval. SBC Ohio contends the access it provides CLECs to loop qualification data is on parity with the access it gives its own retail unit and other affiliates (*Id.* at 16, 17). SBC Ohio also provides information regarding the percentage of loops served by digital loop carriers on a central office within ten business days. SBC Ohio also provides CLECs access to its DSL tracking inquiry (DTI) tool and distribution area information from its internal net work systems. These mechanisms provide CLECs with the ability to better able define where loops are served by IDLC or universal loop carrier within a wire center (Deere Initial Affidavit at 44).

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85 The loop qualification host database is updated monthly by wire center and is a snapshot of loop qualification data from SBC Ohio's provisioning systems for a wire center's loops (*Id.* at 15).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T asserts that two separate changes must be made at approximately the same time to successfully switch an existing SBC Ohio customer to a CLEC (Van de Water Initial Affidavit of September 20, 2001, at 4). According to AT&T, SBC Ohio must first transfer the loop so that it terminates on the CLEC's switch, then telephone number(s) must be ported so that calls can be correctly routed to the end user (*Id*. at 4, 5). AT&T witness Van de Water contends that hot cut processes and procedures are necessary to minimize service risks to the end user's service and risks to CLEC quality of service (*Id*. at 5). AT&T states that, "[i]f the hot cut steps are not completed at the appropriate time, or in the appropriate order, the customer can experience a total loss of service, or be unable to receive incoming calls" (*Id.* at 14). AT&T contends that "[i]f a customer experiences loss of service when transferring its service to AT&T, the resulting damage to ATT's reputation is severe (*Id.* at 15).

AT&T witness Van de Water attests that, even though SBC Ohio has agreed to follow the collaboratively developed hot cut processes and procedures, it has not successfully implemented them in Ohio (*Id*. at 5, 6). AT&T contends the FCC requires that SBC Ohio must provide both coordinated and noncoordinated hot cuts in a nondiscriminatory manner. AT&T asserts that there is little evidence to support that SBC Ohio complies with the FCC requirement (*Id*. at 7). Further, AT&T witness Van de Water argues that, "AT&T's experiences and BearingPoint's preliminary observations of SBC Ohio's actual hot cut procedures indicate SBC Ohio cannot yet claim actual compliance (*Id*. at 6)." In addition, AT&T complains that SBC Ohio only

began to accept FDT orders on June 18, 2001, despite the fact that FDT noncoordinated conversions are the CLECs' preferred method of hot cut conversion. AT&T states that, although most RBOCs have provided FDT conversions for years, SBC Ohio has lagged behind (*Id*. at 13).

According to AT&T, it has historically had the following problems with hot cut orders provisioned by SBC Ohio:

(1) SBC Ohio has prematurely disconnected customers when hot cuts were erroneously performed prior to the requested and confirmed cutover occurrence, resulting in customer down time. This results in a subscriber's SBC Ohio service being terminated prior to AT&T's local service being activated.

(2) FOCs have been returned to AT&T before SBC Ohio has confirmed that the requested loop facilities are actually available.

(3) SBC Ohio provisioned loops that were defective for various reasons.

(*Id*. at 15-17).

AT&T expresses concern that similar to its experiences in Michigan,[86] SBC Ohio is not following the collaboratively agreed to processes for hot cuts (*Id.* at 20). In support of its contention, AT&T denotes the "Third Joint Progress Report Regarding the Resolution of Certain OSS, Process, Product and Performance Measurement Issues and Request for a Procedural Entry on the Remaining Disputed Issues" (Third Joint Progress Report), filed on January 16, 2001. The Third Joint Progress Report addressed a number of concerns regarding hot cuts. AT&T witness Van de Water advocates that, "the Commission should conduct an investigation of SBC Ohio Ohio's performance of frame due time hot cuts and relevant and timely performance data should be reviewed (*Id.* at 28). AT&T also believes that the PUCO should verify that SBC Ohio will conduct hot cut training and manual updates as it has in Wisconsin, Michigan, and Illinois (*Id.* at 23).

2. XO Ohio's Initial Comments/Affidavits

XO Ohio contends that SBC Ohio frequently cancels its conversion orders as late as the FOC date "without providing a reason and without warning (Fabiny Initial Affidavit of September 20, 2001, at 1). XO Ohio states that SBC Ohio frequently reschedules these conversions weeks or months after the original date. XO Ohio believes that only the CLEC, and not SBC Ohio, should be permitted to cancel conversions. XO Ohio also complains that it has had out-of-service problems with loops after SBC Ohio closes a conversion. As a result, XO Ohio must open trouble tickets with SBC Ohio's repair group instead of SBC Ohio's installation group, since SBC Ohio considers the conversion to be complete (*Id*. at 2).

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86 AT&T references the BearingPoint results for Michigan in the March 2001, time frame (*Id.* at 21).

XO Ohio states that SBC Ohio often cancels its DSL loop orders because loop qualification for the loop was not available (Lunceford Initial Affidavit of September 20, 2001, at 1). XO Ohio questions the legitimacy of SBC Ohio's rejection because SBC Ohio and other CLECs are providing DSL services to the neighbors of XO Ohio's end user. XO Ohio asserts that SBC Ohio has failed to respond to its requests for loop lengths of the rejected orders. XO Ohio states that problems with SBC Ohio's DSL loop qualification information system is placing it at a competitive disadvantage.

3. CoreComm's Initial Comments/Affidavits

CoreComm states that its experience with SBC Ohio's hot cut provisioning process has been dismal (CoreComm Initial Comments at 35). CoreComm states that it has records which show that SBC Ohio has failed to provision loops (both hot cuts and new orders) on the scheduled day 13 percent of the time. CoreComm contends that the rate for hot cuts by itself is worse (*Id.*). According to CoreComm, SBC Ohio has not established a feasible system of communication between its technical personnel and CLECs (*Id.*). CoreComm attests that:

> Initially, operations personnel at SBC Ohio proposed a process that included effective communications between SBC Ohio and CoreComm during the hot cut procedure, but this proposal was overruled by SBC Ohio's managerial personnel, who insisted upon a much more convoluted communications process. As a result, most of the customers who have been hot cut have lost service for hours or even days.

(*Id.* at 36).

CoreComm states SBC Ohio's inability to perform commercial volumes of hot cuts on a timely basis has required CoreComm to change its business model in order to avoid ordering hot cuts (*Id*. at 35).

4. WorldCom's Initial Comments/Affidavits

(a) Loop Provisioning

In the area of loop provisioning, WorldCom argues that it has experienced great difficulties in obtaining unbundled loops from SBC Ohio. WorldCom suggests that although this number is improving, there is still a large number of past due loop orders with SBC Ohio. WorldCom contends that SBC Ohio's provisioning time for DSL loops is simply too lengthy (Hussey Initial Affidavit at 2). According to WorldCom, SBC Ohio has failed to provide timely and consistent information about the status of orders. As a result, WorldCom has been required to spend a significant amount of time following up on the status of its orders. WorldCom claims that many of its orders are 30 days or more overdue. According to WorldCom another area of concern is that SBC Ohio will sometimes change the due date for service provisioning without informing WorldCom. This is an added delay for WorldCom customers (*Id.* at 2, 3). WorldCom contends that its technicians often experience very long hold times of 45 minutes to an hour whenever they attempt to contact SBC Ohio. In addition, WorldCom reports that its management personnel have had a number of daily scheduled telephone conversations with SBC Ohio in order to discuss past due orders (WorldCom Initial Comments at 38.

WorldCom argues that SBC Ohio is increasingly claiming that "shortage of facilities" and "undertakings" are barriers to its ability to provision loops by the FOC date. WorldCom further claims that SBC Ohio has provided unreliable information to WorldCom managers regarding the installation dates, resulting in unexpected delays for WorldCom customers (Hussey Initial Affidavit at 4).

In regard to special access services, WorldCom contends that SBC Ohio has failed to provide competitors with nondiscriminatory access to access services is in violation of federal law. The company also contends that SBC Ohio's actions are in violation of state or federal tariff provisions. WorldCom points out that as both a retail competitor and a supplier of wholesale inputs, SBC Ohio has the incentive and potential ability to act to the detriment of its competitors (WorldCom Initial Comments at 39).

Michael Beach of WorldCom discusses SBC Ohio's poor performance with respect to special access. He also provides recommendations for the PUCO to adopt procompetitive and nondiscriminatory performance measures for SBC Ohio's provisioning of special access connections as part of the Section 271 process (Beach Initial Affidavit of September 20, 2001). Mr. Beach contends that WorldCom orders special access for both local and long distance operations, instead of unbundled loops and transport, because of SBC Ohio's position that WorldCom would have to measure the percentage of local usage in order to utilize the UNE equivalent services (WorldCom Initial Comments at 43).

WorldCom asserts it currently provides special access at substandard levels and recommends that the Commission should order specific standards for SBC Ohio's performance in delivering special access. In the absence of specific standards, WorldCom believes that once SBC Ohio is granted Section 271 relief, it will have an economic incentive to provide more favorable provisioning of special access to its own long distance customers.

WorldCom represents that the installation intervals provided by SBC Ohio are unreasonably long. The length of time within which SBC Ohio promises to provide service is measured from the date that an ASR is accepted by SBC Ohio until the date service is due to be installed as provided on the FOC transmitted back to WorldCom by SBC Ohio. The completed installation interval is measured from the date the order is sent until the date service is actually provided. WorldCom contends that SBC Ohio often misses its proposed installation dates. WorldCom indicates that as of August 2001, the average interval offered by SBC Ohio in Ohio was 17.5 days. Of this number, 52.4 percent were installed on time. The average installation for missed orders was 7.7 days beyond the date that SBC Ohio committed to provision the DSL on the FOC.

In regard to sub-loop unbundling, WorldCom contends that there are a number of disputed issues arising from the negotiation of interconnection agreement language between WorldCom and SBC Ohio. The company further contends that, as of the filing of its comments, the PUCO had not yet established permanent pricing for this UNE. Further WorldCom objects to the cost studies submitted by SBC Ohio with respect to sub-loop unbundling in 96-922.

In regard to access to xDSL-capable loops used for advanced services, WorldCom claims that SBC Ohio has relied on broad generalities with respect to its provision of access to xDSL-capable loops, despite the fact that loop qualification and conditioning issues were, at the time of its comments, pending in 96-922 and in 01-1319. WorldCom also states that it has encountered problems with SBC Ohio's provision of xDSL capable loops. In addition, WorldCom states that SBC Ohio has failed to make its DSL loops available for resale contrary to its merger conditions and the federal court of appeals decision, *Association of Communications Enterprises v. FCC*, 235 F. 3d 662 (D.C. Cir. 2001).

According to WorldCom witness Noble, one of the initial steps in determining how WorldCom can provision DSL services to its customers in Ohio is to obtain documentation from SBC Ohio showing the ordering requirements which WorldCom is to follow when ordering DSL compatible loops. Therefore, WorldCom has been conducting "clean order testing" which involves the submission of sample LSR order forms for SBC Ohio's critique and corrections. It was expected that carrying out this "clean order testing" prior to submitting orders would result in reduced order rejections by SBC Ohio and greater efficiency. The clean order testing occurred in October 2000, allowing WorldCom to successfully send a test order (Noble Initial Affidavit at 3).

According to WorldCom, SBC Ohio changed its business practices in June 2001. Therefore, the "clean order testing," which was sent in October 2000, would now be rejected by SBC Ohio. WorldCom also contends that, contrary to information received in October 2000, while attempting to order a 4-wire HDSL-compatible loop in June 2001, SBC Ohio indicated that WorldCom is expected to select a specification

code (SPEC) and include the specific SPEC code on the LSR order form. WorldCom also refers to SBC Ohio's CLEC Handbook. The company alleges that the handbook contains inaccurate, conflicting information compared to the SBC Ohio directive. WorldCom provides that subsequent attempts to have the inconsistencies rectified were met with no response (*Id.* at 3, 4).

(b) Line Sharing/Line Splitting

In regard to line sharing and line splitting, WorldCom states that is briefs filed in 96-922 fully address these issues. WorldCom states that line splitting is an issue that was presented to the PUCO in the 01-1319. The company contends that SBC Ohio is not in compliance with the FCC's Third Report and Order On Reconsideration in CC Docket No. 98-147 and Fourth Report and Order in Reconsideration in CC Docket 96-98 (January 19, 2001) (*Line Sharing Reconsideration Order*).

WorldCom states that it is important to its operations in Ohio that SBC Ohio not be permitted to prevent it from line splitting (Lichtenberg Initial Affidavit of September 20, 2001, at 19). WorldCom complains that SBC is preventing it from line splitting in Michigan (*Id.*).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

In response to AT&T's and CoreComm's assertions regarding SBC Ohio's hot cut process, SBC Ohio witness Brown opines that AT&T and CoreComm "are

incorrect in their unsupported assertions" (Brown Reply Affidavit at 13, 14). He attests that SBC Ohio has implemented all the agreed upon improvements to the coordinated hot cut process, and that the improved hot cut process will be ultimately evaluated by BearingPoint (*Id*. at 14). In addition, SBC Ohio witness Brown states that SBC Ohio's unaudited performance results for the measurement that tracks SBC Ohio's performance relative to hot cuts was 100 percent during June, July, and August 2001. Further, SBC Ohio witness Brown asserts that SBC Ohio's performance for PM-114 (percentage of premature disconnects) PM-114.1 (CHC/FDT LNP with loop provisioning interval),[87] PM-115 (percentage of SBC Ohio caused delayed coordinated cutovers), and PM-59 (percent trouble reports within 30 days of installation), is good enough to refute AT&T's and CoreComm's assertions regarding SBC Ohio's performance related to hot cuts (*Id*. at 14-17).

In reply to CoreComm's allegations that SBC Ohio's CLEC-ILEC communications protocol is unworkable, SBC Ohio contends that such allegations are unfounded (*Id*. at 17). SBC Ohio witness Brown states that the SBC Ohio LOC has functioned as liaison between CLECs and SBC Ohio for several years, and that the LOC's contact and escalation procedures are well documented on the CLEC online website (*Id*.).

Next, in response to AT&T's complaint that SBC Ohio was late in introducing its coordinated hot cut process, SBC Ohio witness Brown states that SBC Ohio and CLECs, pursuant to collaborative negotiations, agreed to not implement the process

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87 This PM measures the percentage of coordinated hot cut/frame due time local number portability with loop line orders completed by SBC Ohio within the established provisioning intervals.

until June 18, 2001 (*Id*. at 18). Therefore, SBC Ohio disputes AT&T's assertions that SBC Ohio was not cooperative in the development and offering of coordinated conversion procedures (*Id*.).

Replying to AT&T's allegation that SBC Ohio should not be able to charge for DD-2 testing, SBC Ohio witness Brown states, "[o]n a routine basis SBC Ohio will not charge the CLEC for its due date plus two days (DD-2) testing.[88] If, however, a CLEC requests a DT/ANI test performed outside the "routine basis"[89] described above, SBC Ohio does have a process which provides for an optional DT and ANI test at a charge to the CLEC" (*Id.* at 20).

D. PUCO Discussion

The PUCO points out that SBC Ohio has implemented numerous interconnection agreements containing provisions for CLECs to access and purchase the loops and sub-loops identified by the FCC. SBC Ohio's compliance with this checklist item relative to hot cuts is addressed in the BearingPoint OSS audit. The PUCO believes that SBC Ohio is in compliance with this checklist item relative to loop make-up information largely because the CLECs have access to the same information as the SBC Ohio affiliates. Also, we note that during the time of the PUCO review and the issuing of this Report and Evaluation, SBC Ohio has been engaging in collaborative discussions with CLECs to develop solutions to loop qualification information issues, as documented in accessible letter CLECAM02-362.

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88 This testing relates to dial tone (DT)/ANI validation.

89 SBC Ohio will not charge CLECs for dial tone/ANI testing if done on a routine basis on DD-2 and/or on the date of the cut.

In addition, the PUCO, in its *March 13th Opinion and Order* established the interim pricing, terms and conditions for loop qualification and loop conditioning, as well as addressed issues related to the determination of electronic vs. manual OSS loop qualification process to be used by SBC Ohio when it provides loop "make up" information, and line conditioning for CLEC's wishing to use unbundled loops for xDSL services. In regard to pricing of line sharing, while line sharing issues were addressed at length during the PUCO's consideration of SBC Ohio's TELRICs in 96-922, we chose not to consider those issues at the time in light of the *USTA* decision, including the D.C. circuit's September 4, 2002, denial of the petitions for rehearing or reheearing en banc and the granting of WorldCom's request for a partial stay of the mandate regarding the FCC's *Line Sharing Order*. In our March 13th Opinion and Order we reserved the right to consider those issues in the future should such action be necessary.[90]

To address the CLEC concerns regarding line splitting, the PUCO, similar to the FCC, has not ordered SBC Ohio to provide line splitting but, at the same time, has stated that SBC Ohio cannot prevent two CLECs from engaging in line splitting on their own[91]. SBC Ohio has made the necessary changes to ensure it does not preclude CLECs from line splitting. The PUCO holds that, although SBC Ohio is not in violation of Section 271 of the 1996 Act relative to its line splitting, SBC Ohio and its numerous affiliates are still bound by the separate affiliate provisions of Section 272 of the 1996 Act.

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90 On February 20, 2003, the FCC adopted a decision (Triennial Review) in 96-98 which addressed, among other things, the May 24, 2002, remand issues (including line sharing) from the D.C. Circuit Court in the *USTA* decision *supra*. The text of the FCC's decision has not been released at the time of this report and evaluation.

The PUCO has considered with extensive discussion in regard to SBC Ohio's FMOD policy. In response to that discussion, the PUCO notes that on January 16, 2001, the PUCO adopted the Third Joint Progress Report filed in this case by SBC Ohio and joining CLECs. The Third Joint Progress Report stemmed from an on going industry collaborative in this case. In the report, SBC Ohio and the joining CLECs filed with the PUCO a joint agreement for the PUCO's approval. The only identified dispute pertained to the question of whether SBC Ohio should be able to impose charges as proposed under the facilities modification policy, and whether charges be properly imposed for complex modifications. On December 20, 2001, the PUCO found that SBC Ohio could charge for complex modifications to the extent the cost of modifications is not captured in its TELRIC. This position is consistent with prior PUCO determinations in its Arbitration Award in 00-1188. In that case it was determined that SBC Ohio has the burden to demonstrate in its TELRIC proceeding that any loop related plant modification costs are not recovered in its TELRIC. Further, the PUCO determined that the cost to convert IDLC to UDLC was not included in SBC Ohio's TELRIC and, therefore, it authorized SBC Ohio to charge for IDLC to UDLC conversions. On May 2, 2002, the PUCO denied the CLECs' request for rehearing on these issues. The PUCO determined that the rates could be set using the previously approved assumptions in the 96-922 case as stated in the PUCO's December 20, 2001, Order. The PUCO noted that prior to assessing a conversion charge, SBC Ohio must first attempt to provide the UNE loop via either spare copper or existing UDLC where available.

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91 See e.g., Arbitration Awards in 00-1188 and 01-1319.

In addition to the above PUCO determination, the PUCO determined that nothing in the 1996 Act, the FCC rules, or the PUCO rules require SBC Ohio to construct new facilities where facilities do not exist to provide UNEs to CLECs. Accordingly, the PUCO determined that SBC Ohio should not be obligated to construct new facilities where facilities do not exist. Although the PUCO determined that there is no affirmative obligation on SBC Ohio to provide new facilities, the PUCO recognized that CLECs, such as WorldCom, could avail itself of SBC Ohio's voluntary FMOD policy for the purpose of new facility construction.

E. PUCO Recommendation

Based on the evidence provided in this case the PUCO recommends that the FCC find that SBC Ohio is in compliance with Checklist Item 4.

VII. CHECKLIST ITEM 5 - UNE LOCAL TRANSPORT

Section 271(c)(2)(B)(v) of the 1996 Act requires SBC Ohio to show that it offers "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

According to SBC Ohio, local transport consists of its interoffice transmission facilities dedicated to a particular carrier ("unbundled dedicated transport" or "UDT"), or unbundled local switching with unbundled share transport ("ULS-ST") that is shared by more than one carrier, that provides telecommunications between

wire centers owned by SBC Ohio or a CLEC or third parties acting on behalf of a CLEC, or between switches owned by SBC Ohio or a CLEC or third parties acting on behalf of a CLEC. SBC Ohio states that it offers both ULS-ST and UDT to all CLECs pursuant to 47 U.S.C. §271(C)(2)(B)(v) and 47 C.F.R. 51.319(d), and thus complies with Checklist Item 5 (Deere Initial Affidavit at 54). In support of its offerings relative to local transport, SBC Ohio cites to various sections an interconnection agreement between itself and Z-Tel Communications Inc., as well as an interconnection agreement between itself and TOTALink.

(a) Unbundled Shared Transport

SBC Ohio represents that it offers ULS-ST to CLECs on a per ULS port basis. According to SBC Ohio, CLECs can use ULS-ST to access SBC Ohio's interoffice network to originate and terminate end user local traffic, using ULS ports, to and from SBC Ohio or third-party switches. Also, ULS-ST also permits access to SBC Ohio's network, using common transport and tandem switching, for the origination from, and completion to, the associated ULS port of end user toll traffic where a customer designated interexchange carrier for the ULS port is not directly connected to the SBC Ohio switch providing that ULS port.

SBC Ohio states that, between SBC Ohio switches, CLEC local traffic will use shared transport and that traffic to non-SBC Ohio switches use the transit function of shared transport. Also, SBC Ohio states that all interexchange traffic is routed to the appropriate interLATA or intraLATA toll carrier for the applicable port. SBC Ohio uses its existing routing tables contained in its switches to provide ULS-ST, and CLECs are not required to purchase a trunk port or associated equipment for the use

of ULS-ST. SBC Ohio indicates that it is responsible for the engineering, provisioning, and maintenance of the underlying equipment and facilities that are used to provide interoffice transport (*Id.* at 55, 56).

(b) Unbundled Dedicated Transport

SBC Ohio defines UDT as an interoffice transmission path dedicated to a particular customer or carrier that provides telecommunications between wire centers owned by SBC Ohio or a CLEC or third parties acting on behalf of a CLEC, or between switches owned by SBC Ohio or a CLEC or third parties acting on behalf of a CLEC. SBC Ohio states that it offers UDT, including interoffice dark fiber and digital cross-connect system (DCS), at DS1, DS3, OC3, OC12, and OC48 speeds, which can be multiplexed or de-multiplexed to convert higher capacity facilities to lower capacity facilities and vice versa (*Id.* 56, 57).

(c) Dark Fiber

SBC Ohio states it provides dark fiber in the dedicated interoffice transport segment of the network as an UNE. Interoffice dark fiber is between two different SBC Ohio central office, and terminates on a fiber distribution frame, or equivalent, in the central office. SBC Ohio offers its dark fiber to a CLEC when the CLEC has collocation space in each SBC Ohio central office where the fiber terminates. SBC Ohio may reclaim from the CLECs the right to use dark fiber, whether or not the dark fiber is being utilzed by a CLEC, upon 12 months' written notice. SBC Ohio must provide an alternative facility for the CLEC with the same bandwidth, and at the same quality; and also demonstrate to the CLEC that the dark fiber will be needed to meet SBC Ohio's carrier-of-last-resort bandwidth requirements within the

12 months following the revocation. CLECs may request dark fiber by submitting a dark fiber facility inquiry, providing the CLEC's specific point-to-point (A-to-Z) dark fiber requirements (*Id.* at 57, 58).

(d) Digital Cross-Connect System (DCS)

SBC Ohio defines a DCS as an electronic device that provides the capability of rearranging circuits on high speed facilities without the need to de-multiplex the signals. SBC Ohio states that it offers DCS in conjunction with the unbundled dedicated transport element with the same functionality that is offered to interexchange carriers, or additional functionality as provided in interconnection agreements pursuant to 47 C.F.R. 319(d)(2)(iv) (*Id.* at 58).

B. Interested Entities' Initial Comments

1. CoreComm's Initial Comments/Affidavits

It is CoreComm's position that SBC Ohio has failed to comply with its obligations under Checklist Item 5. CoreComm states that SBC Ohio is in violation of Section 271(c)(2)(B)(v) of the 1996 Act (CoreComm Initial Comments at 37). CoreComm states that SBC Ohio wrongfully requires competing carriers to take intraLATA toll traffic off its network and transport the traffic to a switch, or other point of presence on the CLECs network. CoreComm argues this restriction violates Section 251(c) of the 1996 Act, the FCC's prohibition against UNE use restrictions pursuant to 47 C.F.R. 51.309(a), and the FCC's SBC Merger Order. CoreComm argues that the FCC approved SBC's Section 271 application in Texas based on its

understanding that SBC offered shared transport as a UNE in order for CLECs to route intraLATA traffic (*Id.*).

2. Joint CLECs' Initial Comments/Affidavits

Joint CLECs state that SBC Ohio is in violation of the FCC's rules because it does not currently provide nondiscriminatory access to shared transport. Joint CLECs assert that SBC Ohio refuses to allow CLECs full access to the routing tables necessary to route intraLATA toll traffic in the same manner that SBC Ohio routes its own traffic. Joint CLECs contend that SBC Ohio is the only RBOC to take this position with respect to the provision of shared transport. Further, Joint CLECs argue that SBC Ohio will not allow CLECs access to SBC Ohio's carrier identification code ("CIC") necessary for the duplication of the routing of traffic that SBC Ohio uses for itself (Joint CLECs' Initial Comments at 27).

3. XO Ohio's Initial Comments/Affidavits

XO Ohio states that according to SBC Ohio, the purpose of the flex test notification is to inform the customer that SBC Ohio has installed and tested the circuit. XO Ohio asserts that it often receives no notification from SBC Ohio or the notification is received late. Even if it does receive the flex test notification, XO Ohio may receive a circuit that is not operational. XO Ohio asserts that these difficulties adversely impact the quality of service that it is able to provide to its customers (XO Ohio Initial Comments at 10).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

In response to the claims that it does not provide nondiscriminatory access to shared transport, SBC Ohio states that the Joint CLECs' claims are moot because the PUCO, in its *October 4th Order* has ruled that CLECs are entitled to route intraLATA traffic over shared trunking (Deere Reply Affidavit at 14). Also, SBC Ohio opines that Joint CLECs must be confused as to the function of the CIC since each carrier is assigned a CIC that points to the switch translation table that controls routing of calls placed by that carrier's customers, and is used to identify originating and terminating traffic for billing purposes. SBC Ohio argues that if a CLEC used the same CIC as SBC Ohio, there would be no way to determine the correct billing for intraLATA toll calls (*Id.*).

D. PUCO Discussion

The majority of the concerns raised by commentors relate to terms and conditions of the SBC Ohio's offering of shared transport. CoreComm and the Joint CLECs argue that SBC Ohio has failed to comply with its obligations under Checklist Item 5 due to its refusal to provide shared transport for the routing of intraLATA toll traffic within its service areas. In addition, the Joint CLECs complain that SBC Ohio refuses to provide CLECs with access to SBC Ohio's CIC in order for the duplication for the routing of traffic similar to that which SBC Ohio uses for itself. As we noted in our recommendation for Checklist Item 2, the PUCO has already addressed this issue in its *October 4th Order* and required SBC Ohio to rout intraLATA toll traffic over its shared transport facilities in the same manner as itt does for its own traffic.

SBC Ohio has executed several interconnection agreements incorporating this requirement, including 00-1188 and 01-1319. Accordingly, the concerns raised by the interested entities are moot.

As to XO Ohio's complaint that either: (1) it fails to receive the flex test notification from SBC Ohio, (2) it receives the notification subsequent to SBC Ohio completing the installation, or (3) despite receiving the notification XO Ohio obtains a circuit that is not operational; we find that these concerns are OSS-related and are addressed in BearingPoint's audit of SBC Ohio's OSS.

Accordingly, we believe that SBC Ohio provides local transport from the trunk-side of a wireline local exchange carrier switch unbundled from switching or other services pusuant to the FCC rules, the PUCO's decisions and policies, and consistent with the requirements of Section 271(c)(2)(B)(v) of the 1996 Act.

E. PUCO Recommendation

Based upon the record in this case, the PUCO recommends that the FCC find that SBC Ohio has demonstrated its compliance with Checklist Item 5.

VIII. CHECKLIST ITEM 6 - UNE LOCAL SWITCHING

Section 271(c)(2)(B)(vi) of the 1996 Act requires that SBC Ohio provide local switching unbundled from transport, local loop transport, or other services. Additionally, in its *First Report and Order*, the FCC further required that SBC Ohio provide unbundled local switching that includes line-side and trunk-side facilities, features, functions, and capabilities of the switch.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) Unbundled local switching

SBC Ohio states that it complies with the requirements of Section 271(c)(2)(B)(vi) of the 1996 Act. Specifically, SBC Ohio witness Alexander states that "Attachment A" to his initial affidavit provides a summary of SBC Ohio's approved agreements that implement binding terms and conditions for ULS that satisfy 47 C.F.R. 51.319(c)(1) and (2) (Alexander Initial Affidavit at 35).

SBC Ohio states that its ULS offering encompasses line-side and trunk-side facilities plus the features, functions, and capabilities of the switch. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame, and a switch line card pursuant to 47 C.F.R. 51.319(c)(1)(A)(i). The trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card pursuant to 47 C.F.R. 51.319(c)(1)(A)(ii). The ULS encompasses all features, functions, and capabilities of the local switch, including but not limited to the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. It also includes the same basic capabilities available to SBC Ohio customers, such as a telephone number, dial tone, signaling and access to 911, OS, DA, all vertical features that the switch is capable of providing (e.g. custom calling and CLASS features), as well as any technically feasible customized routing, blocking/screening, and recording functions pursuant to 47 C.F.R. 51.319(c)(1)(iii).

SBC Ohio's ULS offering enables the CLEC to designate the features and functions that are to be activated on a particular unbundled switch port to the extent that such features and functions are available, or as may be made available pursuant to the BFR process (Deere Initial Affidavit at 60, 61).

SBC Ohio states that it provides the following types of ULS ports:

Analog line port
Analog (DID) trunk port
DS1 trunk port
ISDN basic rate interface (BRI) port
ISDN primary rate interface (PRI) port

(Alexander Initial Affidavit at 36).

SBC Ohio states that its ULS product routes calls on SBC Ohio's shared transport (also known as common transport) facilities to the appropriate trunk or lines for call origination transport according to the same criteria that SBC Ohio applies to its own calls, except as required to fulfill CLECs' requests for customized routing. Also, when a CLEC requests ULS-ST, SBC Ohio routes calls on its shared transport network to the appropriate trunks or lines for call origination or termination using SBC Ohio's existing switch routing table. Additionally, SBC Ohio's ULS product includes access to all call origination and completion capabilities (including intraLATA and interLATA toll calls), and the CLEC is entitled to all revenues associated with its use of those capabilities, including access and toll revenues (Deere Initial Affidavit at 61, 62).

SBC Ohio states that for a CLEC to be able to collect such revenues when the CLEC obtains SBC Ohio's ULS or ULS-ST, SBC Ohio provides detailed usage information to the CLEC based on detailed SBC Ohio recordings of the usage on each ULS port. SBC Ohio provides CLECs with a daily usage file (DUF) in the industry standard exchange message interface ("EMI") format. The DUF includes detailed usage information for all originating and terminating usage on each of the CLECs' ULS ports (Alexander Initial Affidavit at 37, 38). The DUF process was developed to comply with industry guidelines, or where none existed, guidelines agreed upon by SBC Ohio and the CLECs. The DUF extract process has been in use since 1996, and was modified in September 2000 to provide access records to CLECs for carrier usage that originated or terminated to the UNE-P ports. For those CLECs who opt to receive the DUF, SBC Ohio offers a choice of delivery options via magnetic tape or electronically over data lines (connect: direct or file transfer protocol) (Kagan Initial Affidavit at 8, 9).

SBC Ohio indicates that it uses CABS, which was designed to create and render bills for access products and services throughout SBC Ohio's five-state region, for its wholesale operations. CABS was utilized to bill CLECs for the UNE-P loop monthly recurring and nonrecurring charges, and was to be modified by October 2001 so that it could bill all of the UNE-P charges, with the exception OS/DA usage charges which would be billed by using SBC Ohio's reseller billing system ("RBS") (Kagan Initial Affidavit at 5).

(b) Customized routing of OS/DA traffic

SBC Ohio states that it offers two customized routing methods by which CLECs purchasing ULS ports can route OS/DA traffic through its own OS/DA platforms: (1) AIN and (2) line class codes (LCC). Normally, when a CLEC purchases ULS-ST, SBC Ohio uses a customized routing method based upon AIN technology. However, for specific customer serving arrangements, customized routing is only available through LCC, due to their incompatibility with AIN. These include the following: end user service with voice activated dialing served out of a 5ESS switch; coin services, where SBC Ohio's network, rather than the telephone provides the signaling; hotel/motel services; and certain Centrex-like services with features that are incompatible with AIN (Deere Initial Affidavit at 62, 63).

SBC Ohio provides that CLECs may request custom routing other than AIN method by submitting a BFR. A BFR process is necessary to ascertain the technical feasibility of the carrier's request and, if technically feasible, the cost of such a design. SBC Ohio states that its custom routing options meet the FCC's custom routing requirements and qualify to remove OS/DA as a UNE, as was affirmed by the FCC in the Kansas/Oklahoma 271 proceeding (*Id.* at 62-67). SBC Ohio submits that if a CLEC does not specifically request customized routing, the OS/DA calls are routed to SBC Ohio's OS/DA platform (*Id.* at 62).

(c) Cross-Connects

Cross connections are the facility by which SBC Ohio extends its network to the point of access selected by a CLEC. SBC Ohio states it offers CLECs cross-connects to extend its network to the point of access selected by a CLEC. SBC Ohio

states that it offers cross-connects to 2 and 4-wire analog loops, 2- and 4-wire digital loops. SBC Ohio indicates that it also offers the following switch port cross-connects: analog line port, ISDN-BRI, ISDN-PRI, Analog DID trunk, and DS-1 trunk. SBC Ohio states it offers two- and four-wire, and dark fiber cross-connects with sub-loop elements, in addition to an engineering controlled splice (ECS) for CLECs to gain access to sub-loops where SBC Ohio deploys NGDLC to support xDSL and POTS. Finally, SBC Ohio states that it makes cross-connects available with UDT for loop and ports (Deere Initial Affidavit at 70-73).

(d) Unbundled tandem switching

SBC Ohio states that its unbundled tandem switching element meets all requirements in 47 C.F.R. 51.319(c)(2). SBC Ohio defines tandem switching as trunk-connect facilities, including but not limited to the connection between trunk terminations at a cross-connect panel and a switch trunk card; the basic switching function of connecting trunks to trunks; and all technically feasible functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. Tandem switching provides trunk-to-trunk connections for local calls between two end offices, including two offices belonging to different CLECs. Also, SBC Ohio states that to the extent all signaling is SS7, tandem switching preserves CLASS features and Caller ID as traffic is processed (*Id.* at 68, 69).

(e) Unbundled packet switching

SBC Ohio states that it will provide CLECs access to unbundled packet switching, pursuant to the *UNE Remand Order*, when all of the conditions specified in 47 C.F.R. 51.319(b) are satisfied. In each instance, SBC Ohio believes that a determination of whether these conditions have been met must be made at the time a CLEC requests packet switching (*Id.* at 68).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T states that SBC Ohio has failed to provide an efficient means by which CLECs can avail themselves of customized routing of OS/DA (Noorani Initial Affidavit at 14). AT&T contends that UNE-P providers need a standardized and efficient mechanism to deliver OS/DA traffic. AT&T argues that SBC Ohio has taken the "operationally inefficient and unnecessarily complicated" position that AT&T must segregate local OS/DA calls and long distance OS/DA calls on to separate trunks (*Id.*). AT&T consider UNE-P providers to be unique because they establish a customer base across a broad geographic footprint, throughout the ILEC territory. Therefore, AT&T believes that the OS/DA of UNE-P providers must be aggregated in order for the CLECs to have an alternative to the ILEC for OS/DA provisioning. Despite this need AT&T states that SBC Ohio refuses to aggregate OS/DA traffic in a manner that enables CLEC to use alternative means of providing OS/DA. Rather, AT&T contends that SBC Ohio's OS/DA routing proposal requires that UNE-P providers obtain custom routing at each end-office, which AT&T believes is

inefficient and precludes the CLECs using UNE-P from having a real alternative to any OS/DA provider other than the SBC Ohio (AT&T Initial Comments at 33).

2. WorldCom's Initial Comments/Affidavits

Consistent with its position in the OSS section of Checklist Item 2, WorldCom states that SBC Ohio is incapable of properly implementing UNE-P switch translations that would permit another carrier other than SBC Ohio to be the intraLATA toll carrier for the UNE-P customer. WorldCom also states that SBC Ohio has been working on this problem, but the cause has not yet been identified (Lichtenberg Initial Affidavit at 22, 23). WorldCom states that SBC Ohio has refused to provision AIN-based features as part of UNE-P. It is WorldCom's position that, while the FCC has stated that SBC Ohio does not need to provision its privacy manager as part of UNE-P, there has been no determination that any other feature that SBC Ohio offers (except voice mail) does not need to be provided as part of UNE-P (*Id.* at 20).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

SBC Ohio states that AT&T's allegation that SBC Ohio does not provide efficient customized routing is moot because the PUCO approved SBC Ohio's OS/DA customized routing offering in the *October 4th Order* and in the PUCO's arbitration award in 00-1188 SBC Ohio also argues that AT&T ignores the fact that the FCC has previously approved identical custom routing designs for Texas,

Oklahoma, and Kansas.[92] SBC Ohio further argues that it offers nondiscriminatory access to call routing in its central offices that is identical to that which it offers to itself, as demonstrated by its provisioning of trunks from each end office to its own operator service or directory assistance platforms (Deere Reply Affidavit at 7-9). As to Mr. Gillan's claim that SBC Ohio must be required to demonstrate through actual experience that it offers meaningful custom routing capability, SBC Ohio argues that simply because no CLEC has ordered customized routing does not change the fact that it is still offered by SBC Ohio (*Id.* at 10).

In response to WorldCom's difficulties related to switch translations, SBC Ohio acknowledges that there have been two distinct problems identified in connection with the switching of intraLATA calls. SBC Ohio represents that for each of its central office switches, there is information used to identify local, local toll, and long distance calls. In researching WorldCom's complaints, SBC Illinois checked every designation for 47 central offices in the Chicago LATA, where the problem occurred. The search indicated an average error rate of 2.6 percent. According to SBC Ohio, software correction was commenced to fix all such errors in the Nortel central office switches in Illinois, and efforts have been made to identify and fix similar errors in its Lucent central office switches. SBC Ohio states that a second reason for the identified problem can be attributed to the fact that, in some cases, end users have been designated as having the incorrect local toll carrier. According to SBC Ohio, the problem is not widespread and that efforts are continuing to work with WorldCom to resolve the situation (*Id.* at 11, 12).

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92 *Texas 271 Order* at ¶ 339; *Kansas/Oklahoma Order* at ¶ 242.

As to WorldCom's comment regarding SBC Ohio's obligation to offer AIN-based features with its ULS offering, SBC Ohio argues that the AIN-based offerings referred to by WorldCom are not provided by the switch as part of ULS. In support of its position, SBC Ohio references the *UNE Remand Order* (¶ 409), in which it believes the FCC stated that privacy manager software is an AIN-based service software. As a result, SBC Ohio believes that privacy manager should be deemed "proprietary", pursuant to Section 251(d)(2) of the 1996 Act, and, thus, not required to be unbundled and included as part of UNE-P offering. SBC Ohio indicates that the online website provides a detailed list of the AIN services not available with UNE-P (Cottrell Reply Affidavit at 24). SBC Ohio also argues that it complies with the FCC's rules regarding CLEC access to AIN databases on a nondiscriminatory basis, including SBC Ohio's AIN service creation environment (SCE), in order to create their own AIN-based offerings (Alexander Reply Affidavit at 25-27).

D. PUCO Discussion

In addressing SBC Ohio's compliance with Checklist Item 6, we note that there are only three areas in which the CLECs raised issues with SBC Ohio's ULS offering. First, AT&T claims that SBC Ohio has failed to provide an efficient means of customized routing of OS/DA traffic because: (1) SBC Ohio's OS/DA routing proposal requires that UNE-P providers obtain custom routing at each end-office and does not allow for the aggregation of OS/DA traffic in a manner that enables CLEC to use alternative means of providing OS/DA; and (2) SBC Ohio requires AT&T to segregate local OS/DA calls and long distance OS/DA calls on to separate trunks.

We note that the same issue was addressed by the PUCO in its *October 4th Order,*[93]) in the AT&T/Ameritech arbitration award[94] and in MCIm/Ameritech arbitration award[95] where the PUCO found that SBC Ohio's offering of customized routing to be reasonable and determined that it meets the FCC's requirements to relieve SBC Ohio from the unbundling obligation for OS/DA services. We also note that since SBC Ohio provides trunks for each of its own end office to its OS/DA platforms, it is not discriminating when it requires UNE-P providers to obtain custom routing at each end-office. Accordingly, we believe that SBC Ohio's offering of customized routing using AIN and LCC methods and its willingness to offer other custom routing methods through the BFR process demonstrates that SBC Ohio offers nondiscriminatory provisioning of customized routing and meets the FCC's requirements in order to relieve it from the unbundling obligation for OS/DA services. Accordingly, AT&T's claims appear to be moot.

As to WorldCom's argument that SBC Ohio has refused to provision AIN-based features as part of UNE-P, we find that since SBC Ohio provides CLEC with access to AIN databases, including SBC Ohio's AIN SCE at PUCO-approved TELRIC-based rates CLECs have the capability to create their own AIN-based services that compete with SBC Ohio's AIN-based offerings.

Next we address WorldCom's claim that SBC Ohio is incapable of properly implementing UNE-P switch translations that would permit another carrier other than SBC Ohio to be the intraLATA toll carrier for the UNE-P customer. The record

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93 *October 4th Order* at 22.

94 00-1188 Arbitration Award at 18.

shows that SBC has taken corrective actions to correct the problems that took place in Illinois. Nothing in the record reflects that such a problem has occurred in Ohio. Therefore, we do not find such incidents to be relevant to our evaluation of SBC Ohio's offering of ULS.

We believe that SBC Ohio provides access to ULS, unbundled tandem switching, and unbundled packet switching pursuant to the FCC rules and the PUCO's decisions and policies, in accordance with nondiscriminatory rates terms and conditions.

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio has satisfied Checklist Item 6 by offering local switching unbundled from transport, local loop transmission, or other services.

IX. CHECKLIST ITEM 7 - NONDISCRIMINATORY ACCESS TO 9-1-1 AND E9-1-1, DA, AND OS

Section 271(c)(2)(B)(vii) of the 1996 Act requires SBC Ohio to provide nondiscriminatory access to 9-1-1 and E9-1-1 services. This section of the 1996 Act further requires nondiscriminatory access to OS/DA to allow competing carrier's customers to obtain telephone numbers and to operator call completion services.

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95 01-1319 Arbitration Award at 20, 21.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

(a) 9-1-1 and E9-1-1

SBC Ohio states that it satisfies the requirements of Checklist Item 7 by providing CLECs with the means to provide their customers access to 9-1-1 and E9-1-1 services at parity with SBC Ohio for the same access. SBC Ohio asserts that it makes available nondiscriminatory access to its 9-1-1 databases to both facilities-based (switch-based) and nonfacilities-based carriers (e.g., resellers and UNE-P providers) as well as nondiscriminatory connectivity to its 9-1-1 control office pursuant to its interconnection agreements. Based on a CLEC's particular needs, a facilities-based carrier can choose to interconnect via CLEC owned facilities, third-party leased facilities or SBC Ohio leased facilities. SBC Ohio contends that all CLECs have multiple options available to them for submitting and updating their end user data in SBC Ohio's 9-1-1 database and all updates to the 9-1-1 database are processed on a nondiscriminatory basis, with the same edits applied to all records presented to the database (SBC Ohio Initial Brief at 4, Harrison Initial Affidavit of August 9, 2001, at 5). SBC Ohio contends that it transports the E9-1-1 calls from the CLEC's point of interconnection to the control office of the E9-1-1 system, stores the names, addresses and associated telephone numbers of the CLEC's customers in electronic databases; and switches the E9-1-1 calls and transmits the 9-1-1 information associated with the CLEC's customers to the public safety answering point (PSAP) upon the customer calling 9-1-1 (SBC Ohio Initial Brief at 10; Harrison Initial Affidavit at 15, 16).

(b) Trunking

SBC Ohio notes that the trunking arrangements from each end office (serving switch) to the E9-1-1 control offices are the same for SBC Ohio, CLECs, and other local exchange providers that participate in a 9-1-1 system. Further, SBC Ohio states that it assists the CLEC in determining the minimum number of 9-1-1 trunks necessary, makes arrangements for the ordering and the timely delivery of those trunks (if the CLEC chooses to purchase or lease trunks from SBC Ohio), and jointly tests those trunks with the CLEC. After trunk installation is complete, SBC Ohio notes that it conducts continuity testing jointly with the CLEC on the trunks to determine if they are functioning properly. Call-through testing is performed to the PSAPs involved or to an appropriate test PSAP for the CLEC's service area. SBC Ohio states that this is the same testing it performs when it installs new 9-1-1 trunks from its end offices to its 9-1-1 control offices (SBC Ohio Initial Brief at 11, 12; Harrison Initial Affidavit at 17, 18).

(c) End User Record Data

SBC Ohio asserts that it provides CLECs with a description of the geographic area as defined by the Master Street Address Guide (MSAG) (which contains street information with address ranges and the routing information for the responding public safety agencies) and PSAPs served by each E9-1-1 control office. SBC Ohio states that it also provides all necessary street address information for the exchanges or communities where the CLECs operate, in order to allow the CLECs to create the necessary customer files for the E9-1-1 Automatic Location Identification (SBC Ohio Initial Brief at 12, 13; Harrison Initial Affidavit at 21, 22). SBC Ohio also notes it provides CLECs with access to the SBC Ohio 9-1-1 database to electronically

maintain end user records, allowing the carriers to choose from optional data exchange formats with multiple transmissions each day. Additionally, SBC Ohio represents it has implemented tools (TCView and TCEntry) to assist each CLEC in maintaining the accuracy and completeness of its end user data. TCView enables a CLEC to access the SBC Ohio 9-1-1 database to view its end user 9-1-1 records and check addresses for MSAG validity. In TCView, CLECs can view a copy of the MSAG electronically. TCEntry is a downloadable electronic data input system that enables a CLEC to input its end user data into an update record file that can be transmitted via dial-up modem to SBC Ohio for updates to the 9-1-1 database. SBC Ohio notes that this software, when coupled with the MSAG data provided on a CD-ROM will also pre-validate the end user record against the MSAG record (SBC Ohio Initial Brief at 5, 13, 17; Harrison Initial Affidavit at 6, 22, 33, 34).

(d) End User Record Updates

SBC Ohio states that all record update files are processed in a nondiscriminatory manner. The company asserts that all record update files (including those of SBC Ohio, CLECs, or other ILECs participating in the 9-1-1 system) are processed in alphabetical order, in a "first-in, first-out" methodology. The system is scanned every 15 minutes for update files and processes those files, in alphabetical order, as the system is available for updates (SBC Ohio Initial Brief at 16; Harrison Initial Affidavit at 29). SBC Ohio also contends that it provides the facilities-based CLECs that submit data to SBC Ohio's 9-1-1 database, an electronic compare file (on diskette or by email to the CLEC) that contains the subscriber information stored in the SBC Ohio 9-1-1 database for its end user customers. CLECs

can review the electronic compare files for accuracy and submit any necessary corrections to SBC Ohio via the normal record update process (*Id.* at 30).

(e) LNP Errors

SBC Ohio states it provides electronic error reports specific to LNP to the CLECs to facilitate CLEC resolution of LNP-related error records to ensure that the end user 9-1-1 records are accurately reflected in the 9-1-1 database. SBC Ohio notes that there is a window of time during which a 9-1-1 end user record is "unlocked" so that the provider associated with that end user record may be changed, thus, ensuring that the end user record remains in the database, but that the proper telephone provider (SBC Ohio, CLEC or other participating LEC) will be reflected (SBC Ohio Initial Brief at 5, 16, 17; Harrison Initial Affidavit at 6, 31).

(f) OS/DA and DA Listings and Direct Access to DA Databases

SBC Ohio indicates that competing carriers may provide OS/DA for their subscribers by (1) purchasing SBC Ohio's services on a wholesale basis, (2) by using their own personnel and facilities, or (3) by routing their subscribers' OS/DA calls to a third-party provider. SBC Ohio states that competing providers that are purchasing SBC Ohio's OS/DA services on a wholesale basis have access to SBC Ohio's OS/DA service that is equal to SBC Ohio's own access. Additionally, SBC Ohio argues that CLECs who wish to purchase SBC Ohio's OS/DA services on a wholesale basis may request SBC Ohio to brand OS/DA in the CLECs' names. SBC Ohio's states its pricing of OS/DA service is in compliance with the FCC's *UNE Remand Order*. In that order, the FCC found that where incumbent LECs provide

customized routing or a compatible signaling protocol, they need not provide access to OS/DA as UNEs. CLECs who are providing local exchange service via resold telecommunications or ULS, thus, can route their subscribers' OS and/or DA calls from SBC Ohio's end office to their own operator platform to the operator platform of a third-party OS/DA provider.

Competing carriers that wish to provide DA using their own facilities and personnel may obtain SBC Ohio's directory listing either: (1) on a "per query" basis directly to SBC Ohio's DA database, or (2) in a bulk download, with daily updates, to incorporate SBC Ohio's DA listings into the CLEC's own DA database.

SBC Ohio claims that it provides nondiscriminatory access to OS and DA Services and its directory listings pursuant to Sections 251(b)(3) and 271 of the 1996 Act. Further, SBC Ohio claims it is providing CLECs with nondiscriminatory access to SBC Ohio OS and DA services, including call branding, in the same manner that SBC Ohio provides these services at retail to its own subscribers (Rogers Initial Affidavit of August 9, 2001).

B. Interested Entities Comments/Affidavits

1. AT&T's Comments/Affidavits

AT&T's argues that SBC Ohio has failed to comply with its obligations concerning access to OS/DA by insisting that it use separate trunk groups for local and long distance OS/DA calls (Noorani Initial Affidavit at 3). AT&T claims that SBC Ohio has failed to provide an efficient way to receive customized routing. Customized OS/DA routing provides the ability to obtain OS/DA service from

suppliers other than SBC Ohio. AT&T states that central office software, trunking arrangements and customer-specific ordering process are required for customized routing. AT&T claims that SBC Ohio requires it to segregate local OS/DA calls and long distance OS/DA calls on to separate trunks. AT&T claims that this is inefficient and unnecessarily complicates the provisioning process (*Id.* at 14).[96]

2. WorldCom's Initial Comments/Affidavits

WorldCom states that when a customer selects it for local service in Michigan and Illinois, the customer will continue to receive SBC Ohio branding for OS/DA calls for five business days after the migration. Even after this five-day period, there has been a random pattern of WorldCom customers receiving SBC Ohio branding. The company asserts that the five-day delay causes confusion for customers. Further, WorldCom contends that although SBC Ohio was aware of this problem for several months, its solution for the five-day delay was not scheduled to be implemented until October 2001, with the institution originating line number screening (OLNS). Due to the fact that this problem was still unresolved as of the filing of its comments, WorldCom asserts that, for the purpose of this 271 checklist filing, SBC Ohio must be considered to be incapable of performing correct branding for OS/DA (Lichtenberg Initial Affidavit at 23).

WorldCom witness Lehmkuhl claims that, pursuant to the interconnection agreement amendment, SBC Ohio is supposed to provide DA listings downloads to WorldCom. WorldCom asserts that there have been serious problems with the quality of the data which SBC Ohio has provided and that these problems were only

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96 The PUCO notes that AT&T raised similar arguments with respect to Checklist Item 6.

identified as a result of WorldCom's diligence, as it is usually not SBC Ohio's practice to notify WorldCom of discrepancies in the quality of data provided. WorldCom is concerned that these issues may be an indication of other problems which WorldCom may not even be aware of in Ohio. WorldCom reports that, while SBC Ohio has generally provided WorldCom with reloads of the directory assistance listing data to correct these errors, it has received more reloads from SBC Ohio than from any other LEC in the country (Lehmkuhl Initial Affidavit at 2).

WorldCom is particularly concerned with the unexplained fluctuation in the number of individual DA listings that WorldCom receives for the entire SBC Ohio region. WorldCom reports that it has experienced a fluctuation of close to four million listings. Therefore, WorldCom is concerned it is not receiving all the data it is entitled to by law and pursuant to its interconnection agreement. WorldCom represents that it has continued to experience unmatched deletes to its DA listing data. This occurs when a listing deleted in an SBC Ohio daily update file is not found in the WorldCom/SBC Ohio database. WorldCom calls attention to the fact that, if the original listing was never transmitted to WorldCom in the first place, the update file has nothing to delete. According to WorldCom, another recent instance of "bad data" involves the random insertion of question mark characters in the data WorldCom received from SBC Ohio in its update feeds. WorldCom submits that despite repeated requests to SBC Ohio for corrective action, WorldCom was forced to expend a considerable amount of time and money to scrub or clean the data listings on its own. WorldCom is concerned about the anti-competitive effects these problems may have with regard to WorldCom's provision of DA listings in the SBC Ohio region. SBC Ohio surmises that there is no incentive for SBC Ohio to correct the identified problems.

3. Sprint/United's Initial Comments/Affidavits

(a) 9-1-1 and E9-1-1

In regard to 9-1-1 and E9-1-1, Sprint comments that SBC Ohio improperly utilizes a 9-1-1 ordering requirement that is not standardized to comply with the ASR process. Sprint contends that SBC Ohio's current process requires a 9-1-1 trunk order design template (spreadsheet) to be populated in lieu of an ASR. The company asserts that this is a manual process that is not integrated with the ASR process used throughout the telecommunications industry, including the process required by other SBC companies for the processing of 9-1-1 orders. Further Sprint notes that this process is much more susceptible to error because more human intervention is required. Finally, Sprint claims that SBC Ohio's nonstandard 9-1-1 spreadsheet ordering process is very cumbersome and causes unnecessary delay in 9-1-1 trunk installation (Sprint Initial Comments at 13, 14).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

(a) 9-1-1 and E9-1-1

SBC Ohio replies that Sprint's comments regarding "SBC Ohio's nonstandard 9-1-1 spreadsheet process" are incorrect. SBC Ohio states the recommended process for ordering 9-1-1 trunks is the "9-1-1 trunk order form" which is provided to all CLECs on CLEC online. SBC Ohio notes that, as of the filing of its comments, Sprint had used the 9-1-1 trunk order form to order all of its 9-1-1 trunking. SBC Ohio

reports that, because of the large volume of orders which Sprint submitted at one time, Sprint and SBC Ohio agreed that the FOC 9-1-1 trunk information should be returned to Sprint via a spreadsheet rather than by individual forms. SBC Ohio also claims that creating a spreadsheet FOC process has added significant work for SBC Ohio. SBC Ohio concludes that if Sprint would prefer to receive their FOC information on individual forms, rather than a spreadsheet, SBC Ohio will comply with the request. SBC Ohio also notes that Sprint is the only CLEC to raise issues with the process and recommends that they move back to the SBC Ohio standard process (Brown Reply Affidavit at 13, 27).

(b) OS/DA and DA Listings and Direct Access to DA Databases

SBC Ohio witness Rogers states that its OS/DA services, and all the listings in its DA database, are provided on a nondiscriminatory basis as required under the 1996 Act as well as FCC and PUCO orders and rules. (Rogers Reply Affidavit of May 6, 2002, at 3).

According to SBC Ohio, branding on a dedicated trunk basis has long been available to SBC Ohio's wholesale customers. Independent telephone companies, as well as switch-based CLECs, that choose SBC Ohio as their wholesale provider of OS/DA services can have their subscribers' OS/DA calls branded with carrier-specific names. SBC Ohio witness Rogers suggests that, contrary to WorldCom's comments, SBC Ohio does provide correct branding of CLECs' OS/DA calls when a CLEC selects SBC Ohio as its provider of wholesale OS/DA services. SBC Ohio claims that it has deployed branding capability for resale and UNE-based CLECs'

OS/DA calls as evidenced by accessible letter CLECAM00-074, issued August 1, 2000. Subscribers of resale and UNE CLECs' local exchange service can hear their carrier-specific brands when the subscribers dial zero for operator services or 4-1-1 for DA. SBC Ohio claims that WorldCom's comments may not be based on actual experience with SBC Ohio's wholesale OS/DA services (*Id.* at 3, 4).

Further, SBC Ohio witness Rogers argues that WorldCom's comments about a possible five-day interval to change branding are misleading and, more importantly, of no competitive significance. According to SBC Ohio, the branding process described above is dependent upon completion and posting of service orders to migrate local exchange service from one provider to another. The table that holds the per-subscriber-line carrier information is downstream from the carrier migration service order process. Since the table update is downstream from the migration process, there is a period of time before a subscriber's carrier OS/DA branding is changed to its new local service provider. SBC Ohio claims that this is as true for SBC Ohio's CLEC migrations as it is for CLEC to SBC Ohio migrations (*Id.* at 4, 5).

SBC Ohio states that the branding process for resale and UNE CLECs is being improved through the deployment of OLNS. Although OLNS will shorten the interval between migration and branding, it is undisputed that the branding capability itself exists today, and is being utilized by Ohio CLECs. SBC Ohio argues that WorldCom's conclusion that customer confusion results during any interval between carrier-to-carrier migration and changes in branding is inaccurate for two reasons. Most subscribers rarely use OS/DA services on a daily basis, so it is unreasonable for WorldCom to conclude that customer confusion results during a short migration interval. SBC Ohio suggest that the most important point is that all

callers are treated the same, regardless of the subscriber's local exchange carrier. Any change in branding interval between migration of a subscriber from SBC Ohio's local exchange service to a CLEC's resold or UNE local exchange service is the same as when a CLEC subscriber migrates to SBC Ohio's local exchange service. Therefore, SBC Ohio asserts that branding of OS/DA calls handled by SBC Ohio is provided on a nondiscriminatory parity basis (*Id.* at 5).

In response to WorldCom's complaint about the quality of DA listing data and the number of required reloads, SBC Ohio states that WorldCom requested and received four reloads of Ohio DA listings in 2000, and none in 2001. SBC Ohio considers WorldCom's comments to be stale and inappropriate, especially in light of the fact that the reloads were provided, free of charge, in compliance with the requirements of the 1996 Act and FCC rules. In regard to "unexplained fluctuations" last year alleged in WorldCom's comments, SBC Ohio explains that these were not fluctuations at all but, rather, an increase in the number of listings provided due to additional Ohio independent local exchange carriers giving permission to release their listings that reside in SBC Ohio's DA database. Specifically, SBC Ohio states that WorldCom's comments fail to recognize that the growth in the number of listings was a direct result of SBC Ohio's proactive quest to obtain the permission of other carriers to release their listings as required by the 1996 Act and FCC rules. SBC Ohio obtained those carriers' authorizations and released them in 2000 along with SBC Ohio's listings, thus increasing the number of listing provided to WorldCom and other DA listing customers (*Id.* at 6, 7).

SBC Ohio also clarifies that the number of DA listing updates referenced by WorldCom are not specific to SBC Ohio, but are exaggerated by including DA listing

updates from all five SBC Ameritech states. SBC Ohio states that, while WorldCom opines about the "fluctuation" of the number of listing updates received, the reality is that the number of updates are directly related to customers wanting, and receiving, revisions to their white page listings (and, thus, DA listings) just prior to the printing of the local white page directories. Those customer-requested listing changes were reflected in the increase in DA listing updates provided to WorldCom. SBC Ohio argues that WorldCom's comments about "unmatched deletes" in the daily update file of SBC Ohio's DA listings are misleading and inaccurate. SBC Ohio asserts that this issue was investigated and it was found that in every instance the deleted listing matched a listing WorldCom had received previously. According to SBC Ohio, WorldCom was actually trying to match the wrong field on the update files to listings it had previously incorporated into its DA database. SBC Ohio represents that it is accurately providing daily DA listing updates (*Id.* at 7, 8).

SBC Ohio states that WorldCom's accusations about the quality of the listings that it purchases from SBC Ohio is without merit. A programming problem that caused the insertion of question marks in listings for certain abbreviations in titles such as "Dr." was identified and corrected in July 2001. SBC Ohio indicates that it provided new updates free of charge. According to SBC Ohio, WorldCom has not identified any further problems with the DA listings obtained from SBC Ohio (*Id.* at 8).

D. PUCO Discussion

With respect to 9-1-1 and E9-1-1, after a though review of the record on these issues we believe that the arguments and supporting documents put forth by SBC

Ohio, are reasonable and that SBC Ohio is providing nondiscriminatory access to 9-1-1 and E9-1-1 services. We further believe that SBC Ohio has satisfied this competitive checklist requirement.

We believe that the comments provided by WorldCom on branding delays in Michigan and Illinois do not provide the PUCO with insight as to WorldCom's actual experiences in Ohio. The PUCO expects that in Ohio it will continue to provide nondiscriminatory access to OS/DA. In regards, to WorldCom's concerns about DA listings, the PUCO finds that SBC Ohio is in compliance with Section 251(b)(3) of the 1996 Act, 47 C.F.R. 51.217(C)(3), and with the checklist requirements.

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio has satisfied Checklist Item 7 by providing nondiscriminatory access to 9-1-1, E9-1-1, OS and DA.

X. CHECKLIST ITEM 8 - WHITE PAGES DIRECTORY LISTINGS

Section 271(c)(B)(viii) of the 1996 Act requires SBC Ohio to provide white pages directory listings for customers of the other carrier's telephone exchange service.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

SBC Ohio provides white pages directory listings for customers of the other carrier's telephone exchange service. SBC Ohio satisfies this requirement by ensuring that its directory publishing affiliate publishes and integrates the primary listings of a CLEC's customers, who are located within the geographic scope of the white pages (WP) directories serving SBC Ohio's customers, in the same manner (including size, font, and typeface) as the listings of SBC Ohio's customers appearing in these WP directories. CLECs', SBC Ohio's, and independent telephone companies' listings in the WP directories serving SBC Ohio's customers all include the subscriber's name, address and telephone number. CLECs may also request and negotiate arrangements for enhanced listings or services. SBC Ohio represents that it takes reasonable and appropriate steps to ensure that CLECs' customer listings are maintained with the same accuracy and reliability as SBC Ohio's customer listings (Kniffen-Rusu Initial Affidavit of August 9, 2001).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T believes that SBC Ohio's process for CLECs to access and order directory listings is inherently discriminatory and otherwise insufficient to support commercial volumes. AT&T submits that when signing up new local service customers, CLECs need to be able to provide their customers' white page directory listings. According to AT&T, after the order process is final, the CLEC still needs to access SBC Ohio's directory listing database to assist customers with questions about

the listings that were placed, to facilitate changes to those listings, and to update listing information (Samonek Initial Affidavit at 59).

AT&T considers SBC Ohio's processes for CLECs to order and access directory listings to be discriminatory and otherwise burdened with inefficient manual processing that raise the likelihood of fatal errors and delays as order volumes increase. AT&T references the fact that in the OSS Third Joint Progress Report, SBC Ohio committed to provide, a single electronic data interchange (EDI) ordering interface that CLECs could use to process both directory listing and local service orders. A single interface is important to a CLEC because it allows it to have one integrated electronic interface with SBC Ohio for completing LSRs and directory listing requests (DLR). Previously, facilities-based CLECs had been required to have one interface (EDI or manual) with SBC Ohio for LSRs and a separate interface with SBC Ohio's AADS for DLRs (*Id.* at 59-61).

In the Third Joint Progress Report, SBC Ohio committed to "incorporate the functionalities of its OSS interface and SBC Ohio's AADS EDI interface so that CLECs could use a single SBC Ohio interface for service orders and for directory listings on or before June 2001. This commitment was reached via the state OSS collaborative (Samonek Initial Affidavit at 24, 25).

AT&T references the fact that SBC Ohio had originally intended to provide the single interface capability pursuant to its LSOG 5 upgrade in September 2001. AT&T states that, as a result of a March 5, 2001, accessible letter, it became aware that SBC Ohio would not meet its commitment concerning directory listings. SBC Ohio's letter indicated that CLECs would still need to maintain a separate interface with SBC Ohio

AADS. AT&T claims that, although SBC Ohio agreed to accelerate the single interface offering to June 2001, SBC Ohio did not mention that the June 2001, release would provide CLECs with less functionality than what had been planned for September 2001 (*Id.* at 61). Specifically, AT&T points out that the single directory-listing interface it was provided in June 2001 did not incorporate any of the enhanced functionalities of SBC Ohio's EDI OSS interface. AT&T argues that SBC Ohio's position undercuts the benefit of the entire settlement on directory listings - one electronic interface for CLECs to complete both LSR and DLR orders. AT&T avers that the September 2001 LSOG release slipped to March 2002. As a result, AT&T believes that SBC Ohio successfully executed what amounts to a regulatory "bait and switch," and that CLECs were left with a highly undesirable directory ordering process until March 2002 (*Id.* at 61).

Specifically, AT&T contends that, while SBC Ohio agreed to accept integrated LSR-DLRs over the EDI interface, SBC Ohio's AADSwas to still send edits, rejection notices, and completion notices concerning the CLEC directory orders over separate manual interfaces: (e.g., via fax, phone call, or email). As a result, contrary to the Third Joint Progress Report, CLECs would still be required to maintain a separate interfaces one electronic interface for sending the order across to SBC Ohio, and several manual interfaces for receiving ordering responses from SBC Ohio AADS.

In addition, AT&T asserts that SBC Ohio has indicated that CLECs cannot electronically supplement their directory listing orders. AT&T defines supplementation as a standard functionality that is included in SBC Ohio's current EDI interface and is important because it allows the CLEC to fix a problem with an order, or revise it, without having to submit an entirely new order (*Id.* at 62, 63).

AT&T concludes that SBC Ohio's directory listing ordering process is discriminatory because, unlike CLEC orders, the process by SBC Ohio processes its own directory listing orders and is entirely electronic and does not involve interaction with AADS. By strapping its competitors with an inefficient manually driven directory ordering process, AT&T posits that SBC Ohio has given itself an advantage in the market. Specifically, AT&T believes that SBC Ohio's directory ordering process would not support a fully competitive market because of its reliance on manual processing for directory listing orders. According to AT&T, manual intervention in the ordering process leads to any array of potential errors that can be caused by human intervention (*Id.* at 64-67).

2. XO Ohio's Initial Comments/Affidavits

XO Ohio claims that SBC Ohio fails to provide white page listings for customers of XO Ohio with the same accuracy and reliability that is provides to it own customers. XO Ohio utilizes a software application supplied by SBC Ohio known as the SBC Ohio customer entry system ("ACES") (Baldwin Initial Affidavit of September 20, 2001, at 1). XO Ohio uses ACES for the purpose of transmitting a directory listing to SBC Ohio or to revise a current listing..

According to XO Ohio, following the transmission of a new listing or a revision to a current listing, SBC Ohio will claim that it did not receive XO Ohio's listings, despite SBC Ohio's earlier confirmation. XO Ohio submits that this causes a delay in the customer's number being available through directory listings. XO Ohio must either re-enter the information into the database or open a trouble ticket with

SBC Ohio. XO Ohio represents that this occurs with 50 percent of its requests for directory listing additions or revisions (*Id.*).

Once it transmits a listing to SBC Ohio, XO Ohio utilizes a database called TCLISTLINK if it wishes to view the listing as it appears with SBC Ohio. XO Ohio represents that the TCLISTLINK database, differs from the information that XO Ohio provided via ACES. XO Ohio states that SBC Ohio has attributed the experienced problems to its retyping of the information. XO Ohio represents that, as of the filing of its comments, it has had various discussions with SBC Ohio regarding these problems with no resolution being reached.

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

SBC Ohio asserts that it meets its obligations to provide white pages listings to XO Ohio in accordance with the 1996 Act and FCC rules (Kniffen-Rusu Reply Affidavit of October 22, 2001, at 4). SBC Ohio contends XO Ohio provides no data or evidence to support its claims regarding its difficulties with new or revised directory listings. Further, SBC Ohio contends that data collected by SBC Ohio AS's records show that during the first nine months of 2001 AADS accepted, via ACES, XO Ohio's listing transactions (*Id.*).

SBC Ohio responds that the allegations raised by AT&T (i.e., Samonek Initial Affidavit at 59-66) are filled with factual inaccuracies. SBC Ohio asserts that the capabilities provided by SBC Ohio to CLECs for the ordering and maintenance of directory listings are already in full compliance with applicable regulations and have

been further enhanced through the integration of functionalities, such as the integration of the AADS provided EDI interface into SBC Ohio's OSS EDI ordering interface. Specifically, SBC Ohio believes that this was accomplished through the implementation of a functionality, in a manner consistent with OBF LSOG 4 guidelines, which allows CLECs to send an order for an unbundled loop and a related directory listing in a single transaction, or to submit an order for directory listings by itself (Cottrell Reply Affidavit at 28).

In response to AT&T's contentions that the directory listing ordering process is discriminatory to switch-based CLECs and that the directory listing inquiry is inadequate for switch-based CLECs, SBC Ohio submits that these allegations are unfounded. Specifically, SBC Ohio reports that an enhancement was implemented in June 2001, in complete fulfillment of the directory listings ordering commitment made by SBC Ohio during prior OSS collaboratives. With this enhancement, switch-based CLECs are able to access, through SBC Ohio's OSS EDI ordering interface, all the same directory listings ordering functionality previously only available through AADS's EDI interface. SBC Ohio represents that the specifications used by SBC Ohio to develop this enhancement were not changed when the implementation date was moved up from September 2001 to June 2001. SBC Ohio provides that the enhancement implemented in June 2001 is, in every regard, the very same enhancement originally scheduled for implementation in September 2001 in response to the commitment made to the PUCO and the OSS collaborative (*Id.* at 28, 29).

According to SBC Ohio, all directory listings received by SBC Ohio ultimately reach AADS for processing and inclusion in DA and directory publishing databases. This is true for all CLEC listings, whether from a switch-based provider or from a

UNE-P or resale provider, as well as for the listings of all SBC Ohio retail customers. All directory listing orders received by SBC Ohio from CLECs via its OSS EDI ordering interface are edited before being sent to AADS. Just as SBC Ohio retail service reps receive feedback from their order entry system regarding errors in the directory listing information, SBC Ohio states that CLECs are provided the information necessary to edit their orders and detect these same errors before sending them to SBC Ohio (*Id.* at 29).

SBC Ohio recognizes that once AADS receives an order, there is a limited possibility that an error will be encountered that prevents the completion of processing. SBC Ohio submits that this is true of SBC Ohio retail orders, CLEC UNE-P and resale orders, as well as switch-based CLEC orders. The nature of the error encountered may require AADS to contact the CLEC in order to resolve an issue with an order to insure that it is processed correctly. SBC Ohio believes that these contacts are limited in nature. SBC Ohio explains that routinely AADS sends AT&T, and all switch-based providers, four e-mail reports daily: (1) a notification of loss report, which lets the CLEC know that another CLEC has taken ownership of the directory listing; (2) a daily summary of the manual orders received by AADS; (3) a daily summary of electronic users received by AADS; and (4) retain current listing report, which is provided only if the CLEC has number porting activity for that day. The only phone calls made by AADS to CLECs in conjunction with received orders are in response to CLEC-to-AADS calls. SBC Ohio represents that fax inquiries, which are used by AADS to notify CLECs of errors or questions about their listing orders, are sent to AT&T on less than one percent of their switch-based orders (*Id.* at 31, 32).

According to SBC Ohio, its preordering interface directory listings inquiry provides information from SBC Ohio's customer service database. The only directory listings information contained in that database is that retained from orders for directory listings provided by SBC Ohio in conjunction with a telephone number-based service offered by SBC Ohio. Directory listings provided to a switch-based CLEC are not part of any product ordered from SBC Ohio. Instead, they are separately ordered from and provided by AADS. The listing information resides only in the databases of AADS and not in SBC Ohio's customer service record database. Further, SBC Ohio explains that AADS provides access for CLECs to listings included in its database through a GUI listing inquiry interface. Finally, SBC Ohio represents that SBC Ohio and AADS agreed to integrate some of the AADS directory listtings inquiry functionality into SBC Ohio's preordering interface beginning in June 2002.

Based on this explanation, SBC Ohio asserts that its directory listing inquiry capability is not discriminatory (*Id.* at 32).

D. PUCO Discussion

The PUCO believes that the record in this proceeding supports SBC Ohio's claim that it offers CLECs the same level of service and the same type of white page listings that it offers its own retail customers. The PUCO is not persuaded by the allegations of AT&T and XO Ohio that SBC Ohio is not, providing white page directory listings in a nondiscriminatory manner. Therefore, the PUCO believes that SBC Ohio has met its obligation to provide white page directory listings to XO Ohio

and AT&T, as well as other requesting CLECs, in accordance with the 1996 Act and 47 C.F.R. 51.217(c)(3).

The third-party testing of the accuracy of directory listings is addressed in the BearingPoint report.

E. PUCO Recommendation

The PUCO believes that SBC Ohio has provided reasonable support and demonstration that it is in compliance with Checklist Item 8 of the 1996 Act by providing white page directory listings for CLEC customers.

XI. CHECKLIST ITEM 9 - NONDISCRIMINATORY ACCESS TO TELEPHONE NUMBERS

Section 271(c)(2)(B)(ix) of the 1996 Act requires that SBC Ohio must provide "[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules."

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

According to SBC Ohio, it is no longer the central office code administrator for number assignments (Mondon Initial Affidavit of August 9, 2001, at 3). NANPA (or NeuStar) assumed this function, at the direction of the FCC, on March 29, 1999 (*Id.*).

SBC Ohio witness Mondon states that, prior to March 29, 1999, SBC Ohio performed its number assignment duties in a nondiscriminatory fashion by following the industry and FCC guidelines. Furthermore, according to SBC Ohio, during its time as the central office code administrator SBC Ohio assigned 335 NXX central office codes to 15 different local service competitors in Ohio and did not deny any valid requests by certified competitors for NXX codes in Ohio (*Id.* at 5, 6). According to SBC Ohio witness Mondon, since March 29, 1999, SBC Ohio has not performed any function with regard to number administration or assignment; however, SBC Ohio adheres to number administration rules and regulations established by the various regulatory agencies (*Id.* at 7).

B. Interested Entities' Initial Comments/Affidavits

There were no comments filed in this section.

C. Reply Comments/Affidavits

There were no comments filed in this section.

D. PUCO Discussion

There is no dispute that SBC Ohio satisfies this checklist item.

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio has satisfied Checklist Item 9.

XII. CHECKLIST ITEM 10 - NONDISCRIMINATORY ACCESS TO DATABASES AND ASSOCIATED SIGNALING NECESSARY FOR CALL ROUTING AND COMPLETION

Section 271(c)(2)(B)(x) of the 1996 Act requires SBC Ohio to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

According to SBC Ohio the two basic signaling technologies used in telecommunications networks are circuit associated signaling and common channel signaling. With circuit associated signaling, all signaling information is carried on the same facility as the voice path.

Since signaling and voice share the same path, it is necessary to limit signaling to periods when no voice transmission is occurring. In general this limits signaling to set-up time prior to the called carrier's answer and after the completion of the call. With common channel signaling, the signaling information and voice information are carried on separate facilities. This allows signaling to be transmitted at any time during a connection. One channel is used to transmit the signaling information for a large number of voice paths. SBC Ohio provides Signaling System 7 (SS7) common channel signaling service to CLECs for their use in furnishing SS7-based services to their end users or the end user of other CLECs subtending the service switching point (SSP) or signal transfer point (STP) of the interconnecting CLEC. According to

SBC Ohio, when a CLEC purchases unbundled switching capability, SBC Ohio provides access to its signaling network in the same manner that it provides such access to itself.

In regards to database access, SBC Ohio claims that it satisfies the requirements of the 1996 Act by providing CLECs with nondiscriminatory unbundled access to SBC Ohio's 800 database, AIN database, LIDB, and CNAM database used by SBC Ohio, and SBC Ohio's LIDB service management system, known as the operator services marketing order processor (OSMOP).

Access to the 800 database allows CLECs to access SBC Ohio's 800 database for the purpose of switch query and database response, and it provides the carrier identification function required to determine the appropriate routing of an 800 number based on the geographic origination of the call, from a specific or any combination of NPA/NXX, NPA or LATA. There are three optional features that SBC Ohio offers with 800 services. These include: (1) designated ten-digit translation, (2) call validation, and (3) call handling and destination. These features are available to a CLEC and its customers in the same manner as provided by SBC Ohio to its retail customers.

AIN uses distributed intelligence in centralized databases to control call processing and manage network information, rather than performing those functions at every SBC Ohio switch. SBC Ohio represents that it provides CLECs with nondiscriminatory access to its SCE to design, create, test and deploy AIN-based features, equivalent to the access it provides to itself, provided that security arrangements can be established.

LIDB is where local exchange service providers store information about their end users' accounts. SBC Ohio represents that it no longer has its own LIDB but, instead, contracts with Southern New England Telephone (SNET) Diversified Group (DG) to provide it with query access to LIDB. The LIDB is connected to an adjunct fraud monitoring system, managed by SBC Services. Through this system, all accounts, including SBC Ohio's and the CLECs' are monitored for fraud in the same manner and using the same criteria. According to SBC Ohio, the unbundled access that it provides to CLECs for queries to the SNET DG LIDB allows CLECs access to nondiscriminatory call completion capabilities, as well as nondiscriminatory capabilities for entering and storing their own end-user customer information.

The two means of providing access to SBC Ohio's CNAM databases are through an AIN query and a LIDB query. Although at the time of its initial affidavit SBC Ohio supported both database platforms, it indicated that it was in the process of eliminating its LIDB. As a result, all CNAM query traffic was to be redirected to an AIN CNAM database. According to SBC Ohio, the information contained in the CNAM database is available to CLEC end office switches, on an individual query basis together with the associated signaling, just as that information is available to SBC Ohio's end office switches (Deere Initial Affidavit at 75-89).

B. Interested Entities' Initial Comments/Affidavits

1. WorldCom's Initial Comments/Affidavits

(a) Directory Assistance Downloads

WorldCom states that, in accordance with its interconnection agreement with SBC Ohio, the ILEC is suppose to provide DAL downloads. However, WorldCom states that there are serious problems with the quality of the data, and that SBC Ohio has been slow to correct these problems. WorldCom also states that SBC Ohio does not normally notify WorldCom regarding data discrepancies and that WorldCom only discovers these problems through its own diligence. While WorldCom acknowledges that SBC Ohio generally does provide reloads of the DAL data to correct errors, the number of data reloads required from SBC Ohio is greater than from any other LEC in the country.

WorldCom states that there has been an unexplained fluctuation in the number of individual directory listings WorldCom receives for the entire SBC Ohio region. For instance WorldCom points out that in January 2001 the count was 16,746,422 while the count for February, March, and April was 20,117,512; 23,699,397; and 20,082,492 respectively. Due to the fluctuation of close to four million listings, and in the absence of a satisfactory explanation from SBC Ohio, WorldCom is concerned that it is not receiving all the data it is entitled to by law and pursuant its interconnection agreement.

WorldCom states that another area of concern is that it continues to experience "unmatched deletes" to its DAL data. WorldCom explains that an "unmatched

delete" occurs when a listing deleted in an SBC Ohio daily update is not found in the database provided to WorldCom by SBC Ohio. Specifically, WorldCom states that when an original listing is never transmitted to WorldCom, the update file has nothing to delete. As a result of this experience, WorldCom believes that it is not receiving all the data to which it is entitled under the law and its interconnection agreement.

Finally, WorldCom states that another instance of "bad data" involves the random insertion of question mark characters in the data received from SBC Ohio in its update feeds. WorldCom further states that repeated requests to SBC Ohio to correct this problem have not been addressed, thus, forcing WorldCom to expend a considerable amount of time and money to correct the problem itself.[97]

(b) Download Access to the CNAM Database

WorldCom states that the FCC's *UNE Remand Order* classifies those databases used for Caller ID services or CNAM as call-related databases and identifies these databases as UNEs subject to the obligations imposed by Section 251(c)(3) of the 1996 Act. WorldCom further states that Section 251 of the 1996 Act obligates ILECs such as SBC Ohio to provide UNEs at ". . . any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . ."

WorldCom represents that it accesses SBC Ohio's CNAM database on a per query basis. WorldCom states that it has requested download access, rather than

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97 The PUCO notes that many of SBC Ohio's arguments relative to Checklist Item 10 are also addressed in the discussion of Checklist Item 7, *infra*.

access on a per query access, to SBC Ohio's CNAM database, but SBC Ohio has refused WorldCom's request. WorldCom states that it has requested download access in order to build its own CNAM database and access the information for its customers in the same readily accessible manner as SBC Ohio and other ILECs. WorldCom contends that the FCC has indicated that any standard that would allow a local exchange carrier to provide access to any competitor that is inferior to that enjoyed by the local exchange company itself is inconsistent with Congress' objective of establishing competition in all telecommunications markets. WorldCom submits that allowing download access to the CNAM database will allow it to have greater control over the quality of services that it offers.

WorldCom rejects SBC Ohio's claim that, because is also dips into its own database, its access is the same as that offered to CLECs. WorldCom points out that this claim ignores the fact that the database resides in SBC Ohio's own facilities and that SBC Ohio enjoys a level of control and access that WorldCom does not. In particular, WorldCom points to the fact that SBC Ohio also is able to make changes to the database, utilize the database in any way it chooses, and charge other carriers for use of the database. WorldCom emphasizes that if it is to compete effectively in the exchange market, it must be allowed to access to the same database in the same manner as SBC Ohio.

In addition, WorldCom states that SBC Ohio gathers critical proprietary and competitive information through the dip process. WorldCom opines that by requiring database access on an individual query basis, SBC Ohio is able to follow WorldCom's use of the database, which reflects competitive information with respect to WorldCom's overall service and growth. Furthermore, WorldCom contends that

requiring it to dip into SBC Ohio's CNAM database, rather than accessing its own database, forces WorldCom to incur development costs associated with a complex routing scheme within WorldCom's UNE platform. Hence, WorldCom opines that, unlike SBC Ohio, it is incurring a cost associated with implementing and maintaining this routing scheme. WorldCom states that the cost of obtaining the full contents of the SBC Ohio database and developing its own database may be more economical than access that is restricted to a per dip or per-query basis. Therefore, providing bulk data provides potential cost savings to CLECs and provides an incentive to SBC Ohio to avoid setting database query price too high.

WorldCom surmises that access to the CNAM database is analogous to access to the DAL database. Therefore, CNAM should be provided to WorldCom in a bulk, downloadable format. WorldCom further states the FCC concluded that "LECs must transfer directory assistance databases in readily accessible electronic, magnetic, or other format specified by the requesting LECs, promptly on request. . . ."[98] *In the Matter of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information*, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, rel. September 9, 1999

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98 *In the Matter of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information*, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, rel. September 9, 1999 (*1999 Directory Listing Order*) at ¶153.

(*1999 Directory Listing Order*) at ¶153. WorldCom states that the PUCO specifically held that LECs may not restrict competitive access to the DAL database by restricting access to per-query access only (Lemkuhl Initial Affidavit at 1-13).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

SBC Ohio rejects WorldCom's claims that it imposes an unreasonable restriction on access to its CNAM database by limiting it only to per query access. SBC Ohio asserts that WorldCom's position, that the underlying database itself is an UNE and, therefore, must be handed over in a "batch," has no basis in law or fact. SBC Ohio points out that the FCC did not define the UNE as the data but defined the UNE as query access to the database using the SS7 network.

SBC Ohio also claims that the FCC decided that the access to the database could be restricted to only those services supported by that database. Further, SBC Ohio believes that the FCC has only required the ILEC to provide access to its LIDB to the extent necessary to permit a competing provider's switch to access the call-related database functions supported by the LIDB. SBC Ohio maintains such requirements can only be met consistent with the manner in which SBC Ohio has offered WorldCom access to this call-related database on a per query basis. SBC Ohio explains that the FCC specifically has required access to call-related databases at the signaling transfer point. It did not require SBC Ohio to provide CLECs with access to any information contained in the database on a bulk basis.

SBC Ohio rejects WorldCom's argument that "SBC Ohio cannot claim that, because it also dips into its own database, its access is the same as that offered to WorldCom." SBC Ohio asserts that, while it certainly has the right to administer the data in its database, it has offered WorldCom the ability to administer its data through electronic interfaces. SBC Ohio also rejects WorldCom's claims that SBC Ohio garners critical proprietary and competitive information through the dip process.

SBC Ohio believes that WorldCom is incorrect when it states that requiring query access forces WorldCom to incur development costs associated with a complex routing scheme that are not incurred by SBC Ohio. The routing scheme for querying call-related databases for all local providers is controlled by industry standards bodies. In addition, SBC Ohio also asserts that WorldCom is incorrect in its contention that it experiences a delay in receiving information for Caller ID that it would not experience if it operated its own database. SBC Ohio notes that it experiences the same "delay" which is measured in microseconds, and that both SBC Ohio and WorldCom must launch a query through the STP and wait for the response from the appropriate call-related database. This is the same process that is followed by all carriers. According to SBC Ohio, even if WorldCom had a download of all the databases, it would still have to launch a query from the switch to the database unless each WorldCom switch had a copy of the full database loaded inside the switch in order to perform the query.

Finally, SBC Ohio rejects WorldCom's attempted analogy between access to the CNAM database and the DA listing database. SBC Ohio argues that WorldCom is merely trying to confuse the PUCO into thinking that one database is the same as

any other database. SBC Ohio notes unlike the DAL database, the FCC has clearly recognized the proprietary nature of the data in the call-related databases, such as CNAM, and the inability for the ILECs to unbundle the database from the signaling network. SBC Ohio claims that WorldCom's proposal for downloading the CNAM database cannot satisfy the necessary and impair standard. SBC Ohio reiterates that the FCC has already defined the UNE to be access to the call-related databases, and not possession of the database itself. SBC Ohio believes that WorldCom is simply looking for a way to avoid query access charges and gain the ability to populate its own CNAM data base by obtaining the data at UNE rates, rather than having to acquire data through competition with other LIDB providers (Deere Affidavit at 14-24).

D. PUCO Discussion

The PUCO believes that the primary substantive issue with respect to databases and signaling is whether SBC Ohio is required to provision access to the CNAM database via batch download. This issue was previously addressed by the PUCO in 01-1319. Specifically, the PUCO determined that MCImetro should have access on a per query basis to the same databases that SBC Ohio queries and that such access should be pursuant to the same terms and conditions under which SBC Ohio has access to the databases. In reaching this decision, the PUCO incorporated the rationale discussed in the Arbitration Panel Report of April 25, 2002, in 01-1319. The arbitration panel, relying upon *UNE Remand Order* concluded that SBC Ohio's offering of unbundled access to the CNAM database for the purpose of switch query and database response is consistent with the FCC's definition of call-related

databases and is also consistent with the FCC's decisions regarding access to call-related databases.[99]

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends thatt the FCC find that SBC Ohio has satisfied the requirements of Checklist Item 10.

XIII. CHECKLIST ITEM 11 - NUMBER PORTABILITY

Section 271(c)(2)(B)(xi) of the 1996 Act establishes the following requirement on BOCs, "[u]ntil the date by which the PUCO issues regulations pursuant to Section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations."

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

According to SBC Ohio, it has met its obligation under the 1996 Act to provide long-term number portability in Ohio (Mondon Initial Affidavit at 3). SBC Ohio witness Mondon states that not only has SBC Ohio completed the deployment of LNP in its top 100 metropolitan statistical areas (MSAs), as required by the FCC, but also in all of its other exchanges as well. As a result, SBC Ohio witness Mondon

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99 01-1319 Panel Report at 23-26.

points out that, as of October 1999, SBC Ohio has equipped all of its 292 switches within its Ohio operating territory with the long-term number portability solution, location routing number (LRN) (*Id.* at 4). Furthermore, SBC Ohio witness Mondon states that SBC Ohio has complied with all eight criteria established by the FCC for providing LNP through LRN and has provided CLECs with unbundled access to its downstream number portability databases (*Id.* at 6). In addition, SBC Ohio witness Mondon points out that SBC Ohio has agreed to utilize an unconditional 10-digit feature for LNP porting orders as of April 1, 2000. This trigger minimizes service disruptions for customers when they change service providers (*Id.* at 11). Finally, SBC Ohio witness Mondon claims that SBC Ohio complied with the FCC's decisions on cost recovery for number portability by filing a final tariff at the FCC that was effective on July 23, 1999 (*Id.* at 15).

Furthermore, the affidavit submitted by SBC Ohio witness Brown indicates that SBC Ohio has provided extensive training to all personnel involved in LNP (Brown Initial Affidavit at 35). In addition, SBC Ohio witness Brown indicates that coordination and communication measures are continually improving in an effort to ensure that LNP orders are worked in a manner that is transparent to the end users through the implementation of the appropriate OSS (*Id.*).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T is the only entity to claim that SBC Ohio has not met the number portability checklist item. This objection primarily appears to be the result of AT&T's concern with the operation of OSS related to loop cut-overs (AT&T Initial Comments

at 112-114). Through the affidavit submitted by AT&T witness Van de Water, AT&T claims that the series of Ohio third-party test observation reports released by BearingPoint around the time of AT&T's initial comments raise questions as to whether SBC Ohio's interface for stand-alone number portability is operating correctly (Van de Water Initial Affidavit at 29). According to AT&T, the observations reported by BearingPoint provide some concern as to whether SBC Ohio's OSS is fully operational and ready to perform as contemplated by Section 271 of the 1996 Act (*Id.* at 30).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

In its reply comments, SBC Ohio states that SBC Ohio has implemented LNP in every single switch and for every single customer in advance of the schedule set forth by the FCC (SBC Ohio Reply Comments at 63).

D. PUCO Discussion

The PUCO's local service guidelines require that end users have the ability to retain the same telephone number as they change from one service provider to another as long as they remain in the same location, or when moving within the same wire center and exchange area (Local Service Guideline XIV. A). The PUCO further requires that all facilities-based LECs provide LRN, the permanent LNP solution selected by the FCC, in accordance with the time frames and manner established by the PUCO in response to a statewide workshop (Local Service Guideline XIV. C). The purpose of the statewide workshops was to implement the FCC's order in CC

Docket No. 95-116, *In the Matter of Telephone Number Portability*, which required that LRN be made by all facilities-based LECs within the largest 100 MSAs in the country pursuant to a nationwide deployment. Since that time, SBC Ohio has deployed LNP not only in its switches within the largest 100 MSA, but also in every switch throughout its service territory. Furthermore, as pointed out by SBC Ohio witness Mondon, SBC Ohio has had an approved tariff on file with the FCC since 1999. Thus, the PUCO agrees with SBC Ohio that it has fully implemented LNP in its network in accordance with the requirements of the FCC and the PUCO, and, therefore, appears to have met this checklist item.

E. PUCO Recommendation

Based on the record in this proceeding the PUCO recommends that the FCC find that SBC Ohio has satisfied the requirements of Checklist Item 11.

XIV. CHECKLIST ITEM 12 - LOCAL DIALING PARITY

Section 271(c)(2)(B)(xii) of the 1996 Act requires SBC Ohio to provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the 1996 Act.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

According to SBC Ohio witness Deere, the company fully complies with the checklist requirement regarding local dialing parity (Deere Initial Affidavit at 90, 91).

SBC Ohio witness Deere states that the FCC rules (i.e., 47 U.S.C. §51.207) specify that local dialing parity means that telephone exchange service customers within a local calling area may dial the same number of digits to make a local telephone call, regardless of the identity of the customer's or the called party's carrier (*Id*. at 91). According to SBC Ohio witness Deere, SBC Ohio's interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to SBC Ohio customers or vice versa (*Id*.). Finally, SBC Ohio witness Deere points out that the interconnection of SBC Ohio's networks and the networks of CLECs are seamless from a customer perspective because SBC Ohio provides CLECs and IXCs with exchange and interexchange access, network interconnection, collocation, UNEs, and resold services using the existing network facilities, systems, and databases used to serve SBC Ohio's retail customers. Thus, according to SBC Ohio, there are no differences in dialing requirements or any built-in delays for CLEC customers (*Id.* at 92).

B. Interested Entities' Comments/Affidavits

There were no comments filed on this issue.

C. Reply Comments/Affidavits

There were no comments filed on this issue.

D. PUCO Discussion

The PUCO points out that there is no dispute regarding SBC Ohio's claims that it has satisfied the requirements of Checklist Item 12. Based on the record in this case, the PUCO agrees that SBC Ohio has satisfied this checklist item.

E. PUCO Recommendation

Based on the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio has demonstrated compliance with Checklist Item 12.

XV. CHECKLIST ITEM 13 - RECIPROCAL COMPENSATION

Section 271(c)(2)(B)(xiii) of the 1996 Act requires that SBC Ohio provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the 1996 Act..

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

SBC Ohio states that Checklist Item 13 requires it to provide reciprocal compensation arrangements in accordance with Section 252(d)(2) of the 1996 Act, which governs charges for transport and termination of traffic subject to the reciprocal compensation requirements of Section 251(b)(5) of the 1996 Act. SBC Ohio states that it is subject to numerous interconnection agreements that provide for

reciprocal compensation in accordance with the PUCO's orders and the FCC's rules (SBC Ohio Initial Brief at 78).

Three functions may be involved in transport and termination. These include local (end office) switching, tandem transport (includes the tandem transport termination and tandem transport facility mileage), and local tandem switching. SBC Ohio represents that it offers reciprocal compensation rates pursuant to existing agreements based on costs approved by the PUCO in 96-922.[100] Pursuant to its interconnection agreements, SBC Ohio states that terminating interconnection minutes of use and messages used for reciprocal compensation are based on standard automatic message accounting (AMA) terminating recordings made within each carrier's network. These recordings are the basis for SBC Ohio and CLECs to bill each other for reciprocal compensation. For purposes of reciprocal compensation, minutes of use are measured in actual conversation seconds. The total conversation seconds are totaled for the entire monthly bill and then rounded to the next whole minute (Alexander Initial Affidavit at 41-45).

SBC Ohio states that if a CLEC chooses to interconnect at an SBC Ohio tandem office switch, the rate elements applied by SBC Ohio are the tandem switching, tandem transport termination, tandem transport facility mileage, and end office local termination. If a CLEC chooses to interconnect at any SBC Ohio end office, SBC Ohio applies local end office termination rates. These rates include charges for end office switching only, because that is the only function performed by SBC Ohio to terminate the call (*Id.* at 44).

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100 See November 24, 1998, Finding and Order.

As to the compensation for ISP traffic, SBC Ohio states that the FCC has found that a BOC's payment of intercarrier compensation on traffic delivered to ISPs is "irrelevant to Checklist Item 13"[101], and the FCC reaffirmed its position in its July 20, 2001 order approving Verizon's Connecticut[102] (*Id.* at 43).

While SBC Ohio acknowledges that the PUCO has previously ordered it to pay reciprocal compensation for traffic delivered to ISPs pursuant to specific interconnection agreements,[103] the company has sought judicial review of these determinations, but continues to comply with all PUCO orders pending judicial review. SBC Ohio notes that the PUCO subsequently opened an investigation into the appropriate treatment of reciprocal compensation for traffic delivered to ISPs.[104]

With respect to transit traffic, SBC Ohio states that it offers to switch local and intraLATA toll transit traffic to allow CLECs to interconnect indirectly with other local carriers using SBC Ohio's facilities pursuant to the 1996 Act. SBC Ohio's transit service allows one CLEC to send traffic to another local carrier's network through SBC Ohio's tandem, thus enabling the CLEC to avoid the cost of investing in facilities

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101 *Kansas/Oklahoma Order* at 251.

102 *In the Matter of the Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Connecticut*, Memorandum Opinion and Order, CC Docket No. 01-100 (rel. July 20, 2001), at ¶67 (*Connecticut 271 Order*).

103 The Commission's orders, during the year 1998, mandating the payment of reciprocal compensation for ISP-bound traffic only spoke to the specific effective agreements in question and did not address the broader issue of whether it is appropriate to require the payment of reciprocal compensation for ISP-bound traffic. See August 27, 1998.

104 See January 13, 2000 Entry in Case No. 99-941-TP-ARB in *In the Matter of the Commission Investigation Into the Treatment of Reciprocal Compensation for Internet Service Provider Traffic*.

necessary to interconnect to all other local carriers in a local calling area. According to SBC Ohio, transit traffic rate elements include the tandem switching and tandem transport (transport and facility) charges and apply to all usage between carriers that transit Ameritech's tandem switch and terminate to a third-party network. The originating CLEC is responsible for paying the appropriate transiting rates to SBC Ohio and the appropriate termination rates to the terminating third party. Transit traffic rate elements are only applicable when calls transit through SBC Ohio's tandem switch and do not originate with (or terminate to) SBC Ohio's end user (*Id.* at 45, 46).

B. Interested Entities' Initial Comments/Affidavits

No interested entities filed initial comments.

C. Reply Comments/Affidavits

No reply comments were filed.

D. PUCO Discussion

The PUCO notes that SBC Ohio has entered into numerous PUCO-approved interconnection agreements that provide for reciprocal compensation pursuant to Sections 251(b)(5) and 252(d)(2) of the 1996 Act, and in accordance with the PUCO's orders and the FCC's rules (including the treatment of ISP-bound traffic). We also note that SBC Ohio has provided reciprocal compensation arrangements pursuant to PUCO-approved TELRIC-based rates approved in June 1999.

E. PUCO Recommendation

Based on the facts of the record in this proceeding, the PUCO recommends that the FCC find that SBC Ohio has demonstrated its compliance with Checklist Item 13.

XVI. CHECKLIST ITEM 14 - RESALE

Section 271(c)(2)(B)(xiv) of the 1996 Act requires SBC Ohio to make telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the 1996 Act.

Section 251(c)(4) of the 1996 Act places a duty on SBC Ohio to offer for resale, at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In addition, SBC Ohio must not prohibit and not impose unreasonable or discriminatory conditions or limitations on the resale of the offered telecommunication services.

Section 252(d)(3) of the 1996 Act requires a state commission to determine wholesale rates (on the basis of retail rates charged to subscribers by SBC Ohio) for the telecommunications service requested, by a competitor, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by SBC Ohio.

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

SBC Ohio witness Alexander concurs that to successfully comply with Checklist Item 14, SBC Ohio must make its retail telecommunications services available for resale to certified competitive carriers at a wholesale discount. SBC Ohio recognizes that it must offer resale services with no unreasonable or discriminatory conditions or limitations. SBC Ohio points out and refers to several interconnection agreements as evidence that it is compiling with the requirements of the 1996 Act. Specifically, SBC Ohio points to its interconnection agreements with Bullseye Telecom and TOTALink of Ohio, both certified carriers in Ohio. In addition, SBC Ohio witness Fioretti avers that SBC Ohio has implemented performance measures to demonstrate how the services offered by SBC Ohio for resale are of equal quality to that of its own retail services.

SBC Ohio recognizes that the PUCO has required it to discount its retail service by 20.29 percent when a CLEC purchases SBC Ohio's OS and DA in conjunction with resold services and to discount its retail service by 21.45 percent when a CLEC self-provisions OS/DA services. SBC Ohio claims that there may be reasonable limitations on its resale obligation. These include no cross-class selling of services, exceptions for short-term promotions, or other reasonable and nondiscriminatory restrictions applicable to the retail service approved by the state commission. SBC Ohio avers that its restrictions comport with the FCC's rule and are contained in several interconnection agreements. SBC Ohio further claims that it is required to charge the end user common line charge (EUCL) for each local exchange line resold to a CLEC, in accordance with 47 C.F.R. 51.617(a). SBC Ohio claims that it

makes existing retail contracts available for resale to similarly situated customers (Alexander Initial Affidavit at 46-49).

SBC Ohio recognizes that, consistent with the ASCENT decision,[105] a SBC Ohio affiliate is obligated under Section 251(c)(4) of the 1996 Act, to resell to a telecommunications service that it provides at retail. While SBC Ohio agrees that AADS will provide the applicable resale discount for the resale of retail services, it asserts that it does not apply to nonretail services such as the provision of DSL transport to ISPs.

B. Interested Entities' Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T contends that SBC Ohio has not complied with the requirements of Section 251(c) of the 1996 Act and the *ASCENT* decision. AT&T asserts that SBC Ohio is providing DSL retail services to its end users, albeit through an affiliate. Therefore, AT&T insists that SBC Ohio is subject to Section 251(c)(4) of the 1996 Act, as contemplated by the *ASCENT* decision (AT&T Initial Comments at 114-126).

2. WorldCom's Initial Comments/Affidavits

WorldCom argues that SBC Ohio has not implemented a competitive means by which CLEC's may access fiber-fed loops to provide DSL from remote terminal locations. WorldCom believes that SBC Ohio should be required to unbundle Project Pronto. It is further argued by WorldCom that SBC Ohio has refused to

acknowledge its obligations under the *ASCENT* decision to offer for resale the DSL product that SBC Ohio, through its internet affiliate SBC Ohio Interactive Media Services, Inc. (AIMS), provides to retail customers. WorldCom summarizes its comments filed in the Missouri and Arkansas 271 FCC proceedings, in which WorldCom noted that the contracts that SBC offers to ISPs do not provide full ownership of the loop to the ISP, thereby completely negating the ability of unaffiliated ISPs to successfully compete with SBC's ISP affiliate. WorldCom asserts that, as a consequence, ISPs have refused to enter into such arrangements, and a large group of California ISPs has filed a complaint against SBC alleging that the existing arrangements are anti-competitive. WorldCom argues that SBC Ohio intends on creating a monopoly with Project Pronto, inasmuch as unaffiliated ISPs cannot compete, and CLECs are being denied SBC Ohio's DSL product for resale.

WorldCom argues that in the residential market, it will not be able to compete with SBC Ohio since it will not be able to provide the same services to its customers. For example, WorldCom suggests that customers desiring to transfer voice service to WorldCom who receive data services from SBC Ohio will not be able to receive those data services as a resold product from WorldCom. WorldCom claims there are many advantages for encouraging competition between ISPs and DSL providers as it will offer more choices to the consumer. WorldCom believes the PUCO should, therefore, make every effort to preserve the existing nature of the ISPs and encourage the resale of the DSL product of SBC Ohio (WorldCom Initial Comments at 76-80).

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105 *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT decision*).

3. CoreComm's Initial Comments/Affidavits

CoreComm argues that SBC Ohio has failed to provision resold services on the scheduled date seven percent of the time. However, the company notes that it had insufficient data to make comparisons to the service that SBC Ohio provides to its own retail customers (CoreComm Initial Comments at 40, 41).

4. Joint CLECs' Initial Comments/Affidavits

Joint CLECs argue that SBC Ohio still refuses to abide by the *ASCENT decision* and, thus, is refusing to provide CLEC wholesale access to SBC Ohio's retail DSL offering (Joint CLECs Initial Comments at 29-31).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

In its reply comments SBC Ohio rejects any argument that it cannot sell services to a customer under an SBC Ohio contract. SBC Ohio states that, CLECs can elect to assume existing volume and terms of retail contracts of SBC Ohio. SBC Ohio further indicates that, contrary to what CLECs suggest, there are several options for CLECs when wishing to assume retail Centrex service contracts. Further, SBC Ohio dismisses the CLECs claims that customers are locked into SBC Ohio contracts. SBC Ohio also rejects the Joint CLECs' request that the PUCO require a "fresh look" for customers that have entered into contracts. SBC Ohio points out that the PUCO has already gone through a "fresh look" period in Ohio and a second round of fresh look would be unreasonable at this point.

In regard to criticisms regarding the nonrecurring price that a CLEC pays for vertical services,[106] SBC Ohio argues that if it were to mirror a CLEC offering, it would assess its retail customer the nonrecurring charges for the same vertical services, except that SBC Ohio's customer would not receive the wholesale discount provided to CLECs (Alexander Reply Affidavit at 28).

Additionally, SBC Ohio asserts that CLECS do not have to wait until SBC Ohio first offers vertical service packages before they can offer those features in its packages to its customers. SBC Ohio claims that CLECs can obtain any and all of SBC Ohio individual retail service or packages at a wholesale discount and it can also customize its own packages and still obtain the applicable wholesale discount (*Id*.).

2. Consumer Entities' Reply Comments/Affidavits

Consumer Entities echo the comments of AT&T, WorldCom and the Joint CLECs that SBC Ohio is not in compliance with Checklist Item 14, inasmuch as it has failed to offer its DSL services for resale.

Additionally, Consumer Entities reference the *ASCENT decision* which was discussed in the FCC's *Connecticut 271 Order*. In that order, the FCC stated as follows:

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106 SBC Ohio is responding to AT&T's contention that if a CLEC wants to provide a "subset" of the vertical services contained in a particular SBC Ohio retail vertical services package, the nonrecurring charges that a CLEC would pay would be excessive.

> Accordingly, we conclude that to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the existence of VADI as a separate corporate entity (or even a separate division), it is not consistent with the *ASCENT* decision. We also emphasize that Verizon's policy of limiting resale of DSL services to situations where Verizon is the voice provider severely hinders the ability of other carriers to compete. Specifically, Verizon's policy prevents competitive resellers from providing both DSL and voice serves to their customers, while Verizon is able to offer both together to its customers. This result is clearly contrary to the pro competitive congressional intent underlying Section 251(c)(4)."

(*Connecticut 271 Order* at ¶ 32).

Consumer Entities express concern regarding SBC Ohio's position that its AADS affiliate will limit its resale offerings for which the wholesale discount would apply, including exclusion of DSL transport service. Consumer Entities believe that pursuant to the *Connecticut 271 Order*, Section 251(C)(4) of the 1996 Act is applicable to the resale of DSL transport service (Consumer Entities' Reply Comments at 16-20).

D. PUCO Discussion

Resale enables those potential competitors that wish to enter the local telephone service market in Ohio to do so with virtually no capital investment or

delay. It is viewed as a transition vehicle by which CLECs can enter the market. Pursuant to the 1996 Act, SBC Ohio must provide requesting CLECs, at a wholesale rate, with the telecommunications services that it furnishes to its own retail customers. SBC Ohio is further required to offer the same wholesale discount on promotional offerings that last more than 90 days. SBC Ohio must also make available retail customer contracts for resale to similarly situated customers without termination liability charges or transfer fees to the end user.

The PUCO established wholesale discount rates of 20.29 percent and 21.45 percent for resold service based on whether the reseller uses SBC Ohio OS/DA services.[107] Based on the record in this proceeding the PUCO believes that SBC Ohio has deonstrated that it complies with resale requirements of Checklist Item 14.

In regard to SBC Ohio obligation to make available advanced services that its affiliate offers, the PUCO points out that pursuant to PUCO Entry, on December 20, 2001, in this case, the PUCO initially determined that SBC Ohio[108] must offer the resale of DSL transport, consistent with Section 251(c)(4) of the 1996 Act. The PUCO concluded that its ruling was consistent with the *ASCENT decision* and the FCC's *Connecticut 271 Order*. In our Entry on Rehearing of May 2, 2002, in this case, the PUCO acknowledged that the FCC determined that the discount-for-resale

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107 *In the Matter of AT&T Communications of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ohio Bell Telephone Company dba Ameritech Ohio*, Case No. 96-752-TP-ARB, Order on Rehearing, June 9, 1997, and *In the Matter of MCI Telecommunications Corporation's Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ohio Bell dba Ameritech Ohio*, Case No. 96-888-TP-ARB, Order on Rehearing, June 19, 1997.

108 SBC-Ameritech (SBC-Ohio)/Ameritech Advanced Data Services of Ohio, Inc.

obligations pursuant to Section 251(c)(4) of the 1996 Act applies when the incumbent offers DSL service to an end user, but not when it offers DSL service to an ISP.

On May 21, 2002, SBC Ohio filed with the PUCO its compliance filing representing that the DSL transport offering is made on a nondiscriminatory basis. This information was provided pursuant to SBC Ohio witness Habeeb's Supplemental Affidavit of May 21, 2002. Pursuant to its Entry of January 30, 2003, in this case, the PUCO concluded that, in light of SBC Ohio's representation that it does not offer DSL transport as a retail service, and consistent with the Advanced Services Second Report and Order,[109] AADS is not required to provide resale DSL transport at SBC Ohio's avoided cost discount pursuant to Section 251(c)(4) of the 1996 Act. However, the PUCO did state that SBC Ohio and AADS are requied to provide any facilities, services, or information relevant to the provision of resale DSL transport on the same terms and conditions that they apply to themselves pursuant to Sections 251(b) and 272 of the 1996 Act. The PUCO reiterates its intention stated in its Entry of January 30, 2003, that it expects that AADS will negotiate with interested CLECs regarding DSL transport interconnection, and that CLECs will collectively or individually bring disputed broadband offering interconnection issues to the PUCO for arbitration based on the requirements stated in the PUCO's Entry of January 30, 2003.

The PUCO believes that the interested entities have failed to demonstrate any specific discriminatory conduct of SBC Ohio relative to its resale activities.

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109 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCDC rcd. 19237 (rel. November 9, 1999) (*Advanced Services Second Report and Order*).

Therefore, the PUCO believes that SBC Ohio has demonstrated its compliance with Checklist Item 14.

E. PUCO Recommendation

Based on the record of this proceeding, the PUCO recommends that the FCC find that SBC Ohio has demonstrated compliance with Checklist Item 14.

XVII. PUBLIC INTEREST

A. Summary of the Evidence

1. SBC Ohio's Initial Comments/Affidavits

SBC Ohio contends that the experiences in states in which interLATA relief has been granted (i.e., New York and Texas) reflects that a BOC entry into the interLATA market benefits consumers by adding a strong competitor in the long-distance market and by encouraging long-distance providers to compete in the local market (Heritage Initial Affidavit at 17, 19, 20).

SBC Ohio points out that comprehensive performance measures and standards established throughout this proceeding are conducive to assuring future compliance with the various checklist items (SBC Ohio Initial Brief at 84). SBC Ohio references that these performance measurements were developed with substantial input from the CLECs and are similar to those measures and standards previously approved by the FCC in the states of Texas, Kansas, and Oklahoma (Fioretti Initial Affidavit at 13-24). Further, SBC Ohio points out that it will continue to be up to date

with legal and industry developments inasmuch as its performance plan provides for comprehensive reviews every 6 months (*Id.* at 25).

Based on the company's existing remedy plan, SBC Ohio believes that the amount of potential remedies at stake is sufficient enough to provide a meaningful incentive for it to meet its performance obligations and maintain a high level of performance (SBC Ohio Initial Brief of August 9, 2001, at 83). SBC Ohio discusses the method of computing remedy payments and points out that it is virtually identical to the methodology approved in Texas, Kansas, and Oklahoma (*Id.*; Fioretti Initial Affidavit at 100, 101). SBC Ohio represents that the FCC has already concluded that this methodology "discourage[s] anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business" and "represents a meaningful incentive . . . to maintain a high level of performance."[110]

SBC Ohio describes the Ohio remedy plan as providing for automatic self-executing enforcement mechanisms (Fioretti Initial Affidavit at 99, 100; SBC Ohio Initial Brief at 85). The Ohio remedy plan sets a cap of 36 percent of SBC Ohio's net return, which at the time of the filing of SBC Ohio's Notice was estimated at over $181 million (Fioretti Initial Affidavit at 100, 101). Additionally, SBC Ohio asserts that it will remain subject to additional penalties, including the potential suspension and termination of interLATA relief (SBC Ohio Initial Brief at 84).

B. Interested Entities' Initial Comments/Affidavits

1. AT&T's Initial Comments/Affidavits

AT&T rejects SBC Ohio's representation that interLATA relief results in increased long distance competition and increased local entry. In particular, AT&T questions whether states such as Texas, truly experienced the benefits of local and interexchange competition post-271 relief (AT&T Initial Comments of September 20, 2001, at 127-129; Turner Initial Affidavit at 22; Gilan Initial Affidavit at 18-21).

In light of the perceived incentive of an ILEC to favor its own retail operations, AT&T advocates structural separation with independent ownership of the "network company" and the "retail entity" in order to facilitate the development of local exchange competition (*Id.* at 34-37). AT&T believes that the PUCO could condition a favorable recommendation to the FCC upon a requirement of structural separation. In addition, AT&T opines that such a result could be premised on Sections 4905.35, 4905.26, 4905.60, and 4905.05, Revised Code (AT&T Initial Comments at 135-140).

2. Consumer Entities' Initial Comments/Affidavits

As part of the PUCO's public interest analysis, Consumer Entities advocate that the PUCO consider the following issues: (1) SBC Ohio's poor service quality record; (2) the lack of local competition in the company's service territory; and (3) the barriers to competition in the form of nonrecurring charges that SBC Ohio imposes on CLECs. Interested Entities also highlights the public interest parameters identified in Section 4927.02(A), Revised Code, including:

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110 *Texas 271 Order* at ¶¶ 423, 424.

(1) Ensure the availability of adequate basic local exchange service to citizens throughout the state.

(2) Maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service.

(3) Encourage innovation in the telecommunications industry.

(4) Promote diversity and options in the supply of public telecommunications services and equipment throughout the state.

(5) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

(Consumer Entities' Initial Comments at 30, 31, 47).

With respect to SBC Ohio's service quality record,[111] Consumer Entities assert that for the past six years, SBC Ohio has provided inadequate and substandard

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111 OCC cites to the results of four formal investigations into SBC Ohio's service quality. Specifically, these cases are as follows: Case No. 95-711-TP-COI, *In the Matter of the Commission's Investigation Into Ameritech Ohio's Compliance With Several Subsections of Chapter 4901:1-5, Ohio Administrative Code, Concerning the Minimum Local Exchange Company Telephone Service Standards*; Case No. 98-191-TP-COI, *In the Mattter of the Commission's Investigation of Ameritech Ohio Relative*

service to its customers despite the PUCO's attempts to force SBC Ohio into compliance with service quality directives. In light of this situation, Consumer Entities' posit that the company should not be allowed to enter another market that will direct its attention and resources away from its current obligations. In particular, Consumer Entities state that SBC Ohio should not be allowed to receive the benefits of interLATA relief until it has demonstrated that it can consistently provide adequate service quality to its existing local exchange customers (*Id.* at 31-36).

Consumer Entities postulate that whatever service quality problems that SBC Ohio incurs on its retail side flow through to its wholesale operations. In support of this position, Consumer Entities claim that SBC has paid significant fines due to its provisioning of substandard wholesale telephone service to CLECs in the SBC-Ameritech service territory (*Id.* at 36, 37). Specifically, Consumer Entities believe that the wholesale service quality problems experienced by CLECs are due to inadequacies in SBC Ohio's infrastructure and billing systems (*Id.* at 37). To this end, Consumer Entities reference that, since 1996, at least 17 complaints alleging inadequate service have been filed against SBC Ohio relating to its CLEC interconnection agreements (*Id.* at 49).

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to its Compliance with Certain Portions of the Minimum Telephone Service Standards Contained in Chapter 4901:1-5 of the Ohio Administrative Code; Case No. 99-938-TP-COI, *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*; and Case No. 93-487-TP-COI, *In the Matter of the Application of Ameritech Ohio for Approval of an Alternative Form of Regulation*.

Consumer Entities express concern that SBC Ohio's entry into the interLATA market could result in unreasonable rates for some services (e.g., CLASS services), inasmuch as the company could use its monopoly position as a local exchange provider to subsidize its entry into the competitive interLATA long distance market (*Id.* at 47).

Consumer Entities conclude that SBC Ohio's desire to enter the long distance market is primarily motivated as a competitive response to other companies and will unlikely encourage innovation in the telecommunications industry or promote diversity and options in telecommunications services in Ohio. Rather, Consumer Entities believe that SBC Ohio's entrance into the long distance market will result in fewer options as many CLEC s will ultimately exit the market (*Id.* at 48).

Relative to the concern over the level of local competition in SBC Ohio's service territory, the Consumer Entities believe that the establishment of competitive-friendly UNE-P rates, including nonrecurring charges is the key component to promoting competition (*Id.* at 44-46).

3. XO Ohio's Initial Comments/Affidavits

XO Ohio states that SBC Ohio should not be allowed to provide in-region interLATA services because it has an "abysmal" track record in providing services to CLECs. XO Ohio opines that, prior to allowing SBC Ohio to expend resources on a new line of service offerings, the PUCO must first ensure that the company is focusing adequate resources to ensure a minimal level of service to SBC Ohio's retail and CLEC customers. XO Ohio points out that each time a CLEC receives

inadequate service from SBC Ohio, a CLEC customer also receives inadequate service. Therefore, until SBC Ohio is able to improve its performance with respect to the provisioning of essential services to CLECs, XO Ohio advocates that SBC Ohio not be allowed to enter the in-region long distance market (XO Ohio Initial Comments at 12). In addition, XO Ohio recommends that the PUCO simply not allow for poor wholesale service to CLECs under the guise that the quality of service is at parity with that which SBC Ohio provides to itself (*Id*.).

XO Ohio encourages the PUCO to carefully analyze the trustworthiness of SBC Ohio to report its alleged compliance with the Section 271 checklist and as to whether the company will be able to meet any future commitments subsequent to the grant of Section 271 authority (*Id*.)

4. CoreComm's Initial Comments/Affidavits

CoreComm references the FCC's determination that checklist compliance is not sufficient, in and of itself, to satisfy the public interest requirement.[112] Rather, CoreComm states that the public interest inquiry requires the PUCO "to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open."[113] In addition, CoreComm believes that the PUCO must determine that, notwithstanding checklist compliance, SBC Ohio's markets are currently irreversibly open to competition (CoreComm's Initial Comments at 41, 42).

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112 *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd. 20543 (1997) (*Michigan 271 Order*).

Specifically, CoreComm provides that there is little facilities-based competition in Ohio generally, and practically none for residential customers, in particular. Therefore, CoreComm rejects any conclusion that competition is "irreversibly open" (*Id.* at 42). Further, CoreComm represents that SBC Ohio's overt conduct has played a significant role in blocking the development of competition in Ohio. CoreComm opines that such conduct is significant inasmuch as the FCC has stated that in the context of a public interest analysis, it will consider evidence of whether an ILEC has "engaged in discriminatory or other anticompetitive conduct or failed to comply with state and federal telecommunications regulations" (*Id.* at 43, citing to *Michigan 271 Order* at ¶397). In support of its contentions, CoreComm references SBC Ohio's alleged resistance to provisioning UNEs and UNE-P, as well as unbundled intraLATA toll transport, to CLECs (CoreComm Initial Comments at 43, 44). As further support, CoreComm highlights the difficulties it has experienced with SBC Ohio's Win-Back program and the misuse of customer proprietary network information (CPNI) (*Id.* at 44, 45).

Finally, CoreComm concludes that the approval of SBC Ohio's application at this point and time would only solidify SBC Ohio's monopoly control over the local exchange market in Ohio and allow SBC Ohio to ultimately abuse this leverage in the context of the long distance market as well (*Id.* at 46, 47).

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113 *Kansas/Oklahoma Order* at ¶ 267).

5. Joint CLECs' Initial Comments/Affidavits

Joint CLECs contend that the Ohio local market is not open to competition (Joint CLECs' Initial Comments at 31-33). Rather than focusing on the benefits derived from SBC Ohio's entrance into the long distance market, Joint CLECs provide that the real analysis should be focused on the level of competition in the local exchange market. The companies provide that it is only after the local services market is open that additional entrants into the long distance market will result in a public benefit (*Id.* at 33).

Joint CLECs are concerned that SBC Ohio will use its leverage to tie-up small business customers in Ohio in order to protect its market share from CLEC competition. Specifically, it its alleged that SBC Ohio pays excessive commissions, special incentives and pricing discounts in order to have existing customers commit to long-term contracts prior to CLECs establishing service operations in Ohio. As a result, Joint CLECs propose that the PUCO should provide for a new "fresh look" period in all exchanges as a condition of Section 271 approval (*Id.* at 34, 35).

Finally, Joint CLECs allege that the level of SBC Ohio's service quality has deteriorated further due to the inadequate staffing by SBC Ohio. As a result of apparent high turnover, commentors believe that SBC Ohio's staff is in constant need of training and is unable to address the concerns of its CLEC customers (*Id.* at 4).

C. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

SBC Ohio rejects the claims of AT&T and others that competition will not benefit from the granting of Section 271 interLATA relief and that progress in the opening of local markets will be curtailed if SBC Ohio is allowed to enter the Ohio long distance market at this time (Heritage Reply Affidavit at 50). In addition, SBC Ohio disputes Consumer Entities' claims that low CLEC market shares for residential service in Ohio signifies that SBC Ohio's entry into the long distance market would not be in the public interest (SBC Ohio's Reply Comments at 67, 68).

SBC Ohio reiterates its claim that it is already subject to comprehensive performance reporting and monitoring requirements. The company believes that the 150 performance measurements and the requisite checklist items of the 1996 Act provide a sufficient level of oversight. Therefore, SBC Ohio opines that any requests for additional performance measurements and associated penalties should be dismissed (*Id.* at 68, 69).

With respect to Joint CLECs' suggestion that the PUCO order the breakup or structural separation of SBC Ohio, the company concludes that such a request has nothing to do with the 14-point checklist as provided for pursuant to Section 271 of the 1996 Act and, therefore, should not be entertained at this time. Further, SBC Ohio submits that the Ohio Revised Code is void of any provisions allowing for such a result (*Id.* at 73-75). Finally, SBC Oho submits that AT&T's proposed structural separations would be costly, counterproductive, and result in a tremendous amount of uncertainty while failing to reduce the need for regulatory oversight (*Id.* at 76, 77).

In regard to Joint CLECs' recommendation that all of SBC Ohio's contracts with business customers should be subject to a new "fresh look" period as a condition of Section 271 approval, SBC Ohio contends that such action is unnecessary in light of the fact that PUCO has already, in the context of Case No. 97-717-TP-UNC, *In the Matter of the Commission's Approval of Fresh Look Notification*, provided for a "fresh look' opportunity for retail contracts (*Id.* at 78, 79).

Finally, SBC Ohio rejects Joint CLECs' assertions that it has inadequately staffed its CLEC support functions and failed to comply with its merger commitments. SBC Ohio represents that, while the total number of full-time employees dedicated to supporting CLECs has varied over time, it has never declined over below the levels set forth in the 98-1082 stipulation.

2. Consumer Entities' Reply Comments/Affidavits

Consumer Entities reiterate their position that one of the issues that a state commission must consider when determining if a BOC's market is open to competition is whether the ILEC has complied with state and federal telecommunications regulations and orders, including the Ohio minimum telephone service standards and the various service quality orders (Consumer Entities' Reply Comments at 20). Consumer Entities cite to the conclusions of the audit of SBC Ohio's service quality conducted by Liberty Consulting Group and filed on September 21, 2001, in 99-939. Consumer Entities assert that the findings of this audit establish that SBC Ohio continues to provide inadequate service (*Id.* at 20-23). Consumer Entities represent that rewarding SBC Ohio by allowing it to enter the

interLATA long distance market while its service quality is still inadequate, is not in the public interest. Consumer Entities also believe that it is not in the public interest to allow an ILEC into the interLATA market when the company creates barriers to entry in the local market (*Id.* at 24). In order to properly account for the identified service problems in the context of this case, Consumer Entities contend that the PUCO should not support SBC Ohio's application until the company has provided adequate service for 24 consecutive months as measured by specific benchmarks (*Id.* at 23).

D. PUCO Discussion

In addition to satisfying Section 271(c)(2)(B) of the 1996 Act, Section 271(d)(3)(C) requires a demonstration that "the requested authorization is consistent with the public interest, convenience, and necessity." The FCC has held that the public interest standard requires a separate inquiry from that to be occasioned by the competitive checklist, and addresses this matter separately in its decisions.[114] One factor relied upon for considering the issue of "public interest" is whether the ILEC will continue to satisfy checklist requirements after it has received 271 interLATA relief.[115]

With respect to the issue of public interest the PUCO believes that the public interest will be satisfied by SBC Ohio's entry into the interLATA in-region market provided SBC Ohio abides by the remedy plan discussed herein, and the compliance plan discussed in the PUCO's Order in 00-942, issued concurrently with this report.

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114 *Kansas/Oklahoma Order*.
115 *Texas 271 Order* at ¶420.

In reaching this determination, the PUCO believes that the barriers to competitive entry in the local market have been removed and the local market today in Ohio is open to competition, as demonstrated by SBC Ohio's compliance with the competitive checklist criteria discussed supra.

While a number of entities contend that the Ohio market has not yet truly demonstrated evidence of competition, Congress and the FCC, as discussed supra, has never established a market share or similar test for ILEC entry into the long distance market.[116] The FCC has previously determined that, "[g]iven an affirmative showing that a market is open and the competitive checklist has been satisfied, low customer volumes in and of themselves do not undermine that showing. Factors beyond a BOC's control, such as individual CLEC entry strategies for instance, might explain a low residential customer base."[117]

Rather than focusing on the actual level of competition in the Ohio market, the true test is whether the market itself is open for CLECs to enter. The PUCO believes that consistent with SBC Ohio's compliance with the checklist criteria of Section 271 of the 1996 Act, and the UNE and UNE-P market opportunities provided pursuant to our determinations in both this case, as well as pursuant to 96-922, the local market is open to competition. The PUCO is satisfied that the market is open, regardless of the actual level of entry, and that the proper protections, as discussed *supra*, will assure that the market remains open. There are no additional factors or unique circumstances that would make interLATA entry contrary to the public interest. The

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116 *Texas 271 Order* at ¶¶ 416-419.
117 *Kansas Oklahoma Order* at ¶ 268.

PUCO will continue to retain its jurisdiction to ensure that the SBC Ohio complies with all of the PUCO's rules and orders, and will pursue enforcement actions where appropriate.

E. PUCO Recommendation

Based on the record of this proceeding, the PUCO recommends that the FCC find that the requested Section 271 relief is consistent with the public interest, convenience and necessity.

XVIII. PERFORMANCE REMEDY PLAN

A. Summary of the Evidence

1. AT&T's Initial Comments/Affidavits

(a) Performance Remedy Plan

AT&T identifies specific concerns regarding SBC Ohio's remedy plan and believes that these concerns should be addressed in the context of this case. While AT&T recognizes that the PUCO, pursuant to its Opinion and Order in 98-1082, required SBC Ohio to implement the performance measures and remedy plan available at the time in the state of Texas, AT&T believes that modifications to the plan are necessary in order to provide SBC Ohio with sufficient incentive to meet its obligations to CLECs (Moore Initial Affidavit of September 20, 2001, at 4, 9). AT&T alleges that SBC Ohio has not complied with the provisions (e.g., the self-executing

provisions which allow for an automatic remedy) of the Texas Remedy Plan in the 12 states where the plan has been proposed or is in effect (*Id.* at 9-11).

AT&T points out, since the time of the PUCO's adoption of the Texas Remedy Plan, the CLECs now have significant experience with the Texas Remedy Plan and the variations implemented in the SBC Ameritech states. AT&T calls attention to the fact that proceedings have commenced in the other SBC-Ameritech states for the purpose addressing the adoption of a permanent remedy plan, but no such consideration has occurred in Ohio, despite the repeated requests by the CLECs (*Id.* at 4-9). AT&T believes that a remedy plan is a "necessary prerequisite to obtaining long distance authorization" (*Id.* at 12).

B. Reply Comments/Affidavits

1. SBC Ohio's Reply Comments/Affidavits

SBC Ohio rejects AT&T's characterization of a remedy plan as a "necessary prerequisite to obtaining long distance authorization." In support of its position, SBC Ohio cites to the FCC's Texas 271 Order at ¶ 420, in which SBC Ohio contends that the FCC stated that "[a]lthough the PUCO strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of Section 271 approval." Finally, SBC Ohio points out that the remedy plan that it implemented as part of 98-1082, and that is currently in place, has already been subjected to FCC review and approval (Fioretti Reply Affidavit of October 22, 2001, at 27). Finally, SBC Ohio represents that the existing remedy plan has never been considered interim and has never had an expiration date (SBC Ohio Reply Comments at 72).

SBC Ohio asserts that it fully intends to comply with all provisions of the current Ohio remedy plan. The company notes that AT&T has failed to offer any evidence of noncompliance by SBC Ohio regarding the implementation of its remedy plan (Fioretti Reply Affidavit at 23). SBC Ohio emphasizes that the remedy plans being considered in the other SBC states are based on the same plan adopted in the state of Ohio. Further, SBC Ohio claims that the remedy plan proposed by the CLECs in Ohio has already been rejected by the other SBC states (*Id.* at 20-22).

Contrary to AT&T's claims, SBC Ohio represents that SBC Ohio's wholesale service results have improved since the implementation of the existing remedy plan. SBC Ohio speculates that AT&T's criticism of the existing remedy is likely as a result of the decreased payments received due to this improved performance (*Id.* at 22). SBC Ohio also discounts AT&T's arguments regarding SBC's alleged refusal to pay remedies and comply with the six-month review of performance measures in Texas (*Id.* at 24).

SBC Ohio rejects AT&T's characterization of a remedy plan as a "necessary prerequisite to obtaining long distance authorization." In support of its position, SBC Ohio cites to the FCC's *Texas 271 Order* at ¶420, in which SBC Ohio contends that the FCC stated that "[a]lthough the PUCO strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval." Finally, SBC Ohio points out that the remedy plan that it implemented as part of 98-1082, and is currently in place, is the one that has already been subjected to FCC review and approval (*Id.* at 26).

C. PUCO Discussion

The PUCO must now determine whether the existing remedy plan is sufficient for the purpose of complying with Section 271 of the 1996 Act, or whether the any modifications to such plan are necessary prior to receiving interLATA relief.

The FCC has recognized that the existence of a satisfactory performance monitoring and enforcement mechanism (e.g., remedy plan) would constitute probative evidence that the market will remain open, that the ILEC will continue to meet it Section 271 obligations post-interLATA relief, and that its entry would be consistent with the public interest.[118]

The FCC has identified five significant components of a performance remedy plan: (1) potential liability that provides a meaningful incentive to comply with the designated performance standards; (2) clearly articulated, measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure to detect and punish poor performance; (4) a self-executing mechanism; and (5) reasonable assurance that the reported data is accurate.[119]

The FCC has already determined that the Texas Remedy Plan to be satisfactory for the purposes of its Section 271 analysis, inasmuch as the remedy plan has sufficient incentives to maintain a high level of wholesale service, and sufficient disincentive for the ILEC to engage in anti-competitive behavior after Section 271

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118 *Texas 271 Order* at ¶ 420.
119 *Id*. at footnote 1230.

relief.[120] The PUCO finds that SBC Ohio's existing remedy plan, which is premised on the Texas Remedy Plan, is sufficient for the purposes of Section 271 approval, inasmuch as it satisfies the criteria identified above for the purpose of promoting post-271 relief checklist compliance. In reaching this determination, the PUCO references our Entry of January 30, 2003, in this proceeding, whereby we found that no further consideration of replacing the existing remedy plan should occur in the context of this case. The PUCO determined that for the purpose of its review of SBC Ohio's 271 Application, "the PUCO's charge relative to the remedy plan is limited to opining on the reasonableness of SBC Ohio's current remedy plan."[121]

As stated above, the PUCO recognizes that the FCC has previously approved the Texas Remedy Plan for the purpose of Section 271 relief. In addition, the FCC has approved similar remedy plans in Kansas, Missouri, Oklahoma and Arkansas. While the performance measurements encompassed within the Ohio remedy plan originate from the plan established in Texas, the measurements have continued to be updated pursuant to the Ohio-specific collaborative process that has been ongoing over the past couple of years. In addition, the PUCO notes that concurrent with this analysis of SBC Ohio's 271 application, we have ordered that SBC Ohio comply with the state-specific compliance plan which addresses specific performance measures which must be met and the applicable sanctions for failure to do so.

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120 *Id*. at ¶ 423.

121 Case No. 00-942, Entry of January 30, 2003, at 11. The PUCO notes that this determination is consistent with the recent federal district court decision, *Indiana Bell Telephone Company v. Indiana Utility Regulatory Commission et al*., Case No. 1:02-CV-1772-LJM-WTL, (S.D. Indiana, Indianapolis Div.) Order on Cross-Motions for Summary Judgment (March 11, 2003).

Additionally, the PUCO notes that although the Texas Remedy plan is the remedy plan being offered generically for the purpose of satisfying the requirements of Section 271 of the 1996 Act, it does not preclude CLECs from negotiating different remedy terms and conditions in context of an interconnection agreement or adopting the remedy terms and conditions from another interconnection agreement. For example, the PUCO recognizes that the SBC/Time Warner interconnection agreement approved in Case No. 02-2725-TP-AEC, *In the Matter of the Application of Ameritech Ohio for Approval of an Agreement Amendment Pursuant to Section 252 of the Telecommunications Act of 1996*, incorporates a plan other than the Texas Remedy Plan. CLECs may also avail themselves of SBC Ohio's recourse tariff approved in Case No. 97-1729-TP-ATA, *In the Matter of the Application of Ameritech Ohio for Authority to Amend its Tariff*.

Finally, the PUCO highlights the fact that, although we conclude that a modification of SBC Ohio's remedy plan is not appropriate for the purposes of a Section 271 analysis, the PUCO has determined that a new proceeding should be commenced for the purpose of the PUCO exercising its oversight in regard to SBC Ohio's existing remedy plan.[122] Through this review process, the PUCO will consider any revisions that must be implemented in order for SBC Ohio's remedy plan to continue to effectively satisfy the purpose for which it was intended, including addressing concerns regarding backsliding. The PUCO's continued oversight in regard to both the remedy and compliance plans is consistent with the PUCO's authority as delegated by Sections 4905.04(B) and 4927.02(A), Revised Code.

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122 See Commission Entry on Rehearing of March 25, 2003, in 00-942.

XIX. CONCLUSION

Based on our review of the record in this proceeding, the PUCO believes that SBC Ohio satisfies the requirements of Section 271 of the 1996 Act and has, for the purposes of Section 271 relief, opened its local market to CLECs that wish to compete within its incumbent local service territory. Incorporated as part of this conclusion, the PUCO believes that the SBC Ohio has demonstrated compliance relative to the third-party OSS test, as discussed in Appendix A to our Report and Evaluation and in our Order of June 25, 2003. Therefore the PUCO recommends that the FCC approve SBC Ohio's Section 271 application. The Commission notes that its recommendations and discussions in this Report and Evaluation are limited to the issue of Section 271 compliance and are not binding on the Commission in any other proceeding.